

**MINUTES  
BOARD OF ADJUSTMENT  
CITY HALL COUNCIL CHAMBERS  
116 W. NEEDLES AVE.  
BIXBY, OK 74008  
September 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 6:00 PM.

**ROLL CALL**

Members Present: Murray King, Darrell Mullins, Jeff Wilson, Larry Whiteley.

Members Absent: Dave Hill.

**MINUTES**

1. Approval of Minutes for August 01, 2011

Chair Jeff Wilson introduced the item and asked to entertain a Motion. Larry Whiteley made a MOTION to APPROVE the Minutes of August 01, 2011 as presented by Staff. Chair Jeff Wilson SECONDED the Motion. Roll was called:

**ROLL CALL:**

AYE: Mullins, Whiteley, Wilson, & King

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 4:0:0

**OLD BUSINESS**

None.

NEW BUSINESS

- 2. **BBOA-542 – Joe Moore.** Discussion and possible action to approve a Variance from the 25’ front yard setback per Zoning Code Section 11-7B-4.A.1 Table 3 for property within the RS-3 Single Family Dwelling District.  
Property located: Lot 31, Block 1, WoodCreek; 7218 E. 112<sup>th</sup> 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:** Friday, August 19, 2011  
**RE:** Report and Recommendations for:  
 BBOA-542 – Joe Moore

**LOCATION:** – 7218 E. 112<sup>th</sup> St. S.  
 – Lot 31, Block 1, WoodCreek  
**LOT SIZE:** 0.3 acres, more or less  
**ZONING:** RS-3 Single Family Dwelling District  
**REQUEST:** A Variance from the 25’ front yard setback per Zoning Code Section 11-7B-4.A.1 Table 3 for property within the RS-3 Single Family Dwelling District  
**SURROUNDING ZONING AND LAND USE:** RS-3; Residential single family homes in WoodCreek.  
**COMPREHENSIVE PLAN:** Corridor  
**PREVIOUS CASES:** (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.*

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

*BBOA-455 – Sack & Associates, Inc. for Brewer Construction – Request for Variance to reduce a 25’ setback to 15’ along 112<sup>th</sup> Pl. S. for a corner lot located to the southeast of the subject property at 11251 S. 72<sup>nd</sup> E. Pl., Lot 22, Block 1, WoodCreek – BOA Approved 08/06/2007.*

**BACKGROUND INFORMATION:**

*The plat of WoodCreek also imposes a 25’ setback requirement. The City of Bixby does not have legal standing to enforce, alter, or abrogate private deed restrictions or covenants. They are among and between, for the benefit of, and enforceable by the property owners within the subdivision, as set forth in the Deed of Dedication and Restrictive Covenants applicable to the specific subdivision.*

*The Board of Adjustment derives authority from and has jurisdiction over matters arising from within the Zoning Code, and so private restrictions imposed by the plat are afforded relief through City Council and property owner approval of amendments to the plat and/or through the court systems. In other words, the encroachment on the coterminous 25’ Building Line setback on the plat of WoodCreek is not before the Board for consideration.*

**ANALYSIS:**

*Subject Property Conditions.* The subject property consists of Lot 31, Block 1 in WoodCreek, zoned RS-3 Single Family Dwelling District. It contains a single-family dwelling fronting north onto 112<sup>th</sup> St. S.

*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. Zoning Code Section 11-7B-4.A.1 Table 3 requires a 25' minimum front yard setback. According to the submitted Mortgage Inspection Report, the existing house appears to be encroaching on the 25' front yard setback in two (2) areas, one by 1.8' and the second by 1.4'. Therefore, the Applicant requested a Variance from the 25' front yard setback in the RS-3 district. The side and rear yard setbacks appear to be in order.

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 "A surveying company was hired to set the pin and the house was constructed according to plot plan and pin placement. There was a good faith attempt to honor the building line."

Elsewhere in the application, the Applicant states, "The house is located at the end of a small cul-de-sac. The building 1.8 foot incursion into the 25 foot building line is on two small sections of front of house and it's not encroaching on all areas. House elevation changes helps to hide the incursions. A uniform building line is not critical for those reasons."

The house on the subject property is located at the cusp of the cul-de-sac turnaround. In order to place the public notice sign, Staff inspected the site on August 18, 2011. During this site inspection, Staff observed and considered that the angle of the house on the lot and the curvature of the turnaround may have contributed to the error that caused the house's small degree of advanced placement on the lot. Staff was not able to perceive the house's encroachment on the front building line.

However, these circumstances possibly having caused the encroachment is not the same thing as these circumstances constituting "peculiar, extraordinary, or exceptional" conditions not generally present in "other propert[ies] in the same district." The subject property lot complies in all respects to the standards applicable to a residential lot in the RS-3 zoning district. It is a lot similar to the lot directly across the street, which can be considered the near-mirror image of the subject property. That lot has an existing house; Staff has no information suggesting there is an encroachment on that lot.

Staff places greater emphasis on the unique, extraordinary, and exceptional circumstance peculiar to this property, in that it did have a survey and survey pins placed with the intention of avoiding this sort of error, and in substantial reliance thereon, built according to the errant survey pins. Most house sites in Bixby, within the RS-3 district and otherwise, are not surveyed prior to construction, making this situation and condition exceptionally rare.

Staff agrees with the applicant that these should be seen as Peculiar, Extraordinary, and/or Exceptional Conditions or Circumstances in satisfaction of 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 "The building is already constructed and is being occupied. The adherence to the building line would cause sections to the house to be torn down. Changing the front would be a [detriment] to the houses architectural style and would degrade the property value."

Staff concurs with the Applicant's claim of hardship. Failure to secure approval of this Variance would leave the subject property illegally nonconforming and the house technically subject to abatement (removal of the house or the encroaching parts thereof). This could be considered a severe and 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 "The house is located at the end of a small cul-de-sac. The building 1.8 foot incursion into the 25 foot building line is on two small sections of front of house and it's not encroaching on all areas. House elevation changes helps to hide the incursions. A uniform building line is not critical for those reasons."

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).

East 112<sup>th</sup> Street South 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. Neither the

*Bixby Comprehensive Plan nor the TMAPC Major Street and Highway Plan designate it as a Major Street. 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.*

*As stated above, the house on the subject property is located at the cusp of the cul-de-sac turnaround, and based on a site inspection, Staff observed that, likely owing to the angle of the house on the lot and the curvature of the turnaround, the relatively small degree of the house's advanced placement on the lot, and the location and scale of the two (2) existing houses on either side of the subject property, the house's encroachment on the front building line is likely imperceptible to the untrained eye.*

*Further, the house on the subject property is located at the end of a short cul-de-sac, rather than a long, uninterrupted standard, straight block street with 90° street intersections at each end. Finally, the house is recessed in a southerly direction behind the established front building line for the existing houses on the south side of the street, so from the perspective of 72<sup>nd</sup> E. Ave., and as one travels east on 112<sup>th</sup> St. S., the marginal exceedance should not even be within view.*

*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 1.8' of setback, a Variance of 1.8' 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 of a Variance of 1.8' from the 25' front yard setback.*

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Joe Moore of 7218 E. 112<sup>th</sup> St. S. was present but had no comment.

Chair Jeff Wilson asked if anyone else wished to speak on the item. No one else spoke on the item.

There being no further discussion, Chair Jeff Wilson made a MOTION to APPROVE BBOA-542 as recommended by Staff. Larry Whiteley SECONDED the Motion. Roll was called:

**ROLL CALL:**

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

- BBOA-543 – Gary McDaniel.** Discussion and possible action to approve (1) a Variance from the nonconforming use/structure replacement restriction of Zoning Code Section 11-11-3.G, (2) from any other Zoning Code restriction preventing the replacement of an office building serving the *Sunnyside Gardens / Sunnyside Nursery* business, including allowing a temporary prefabricated / manufactured building during the period of construction, all for property within the AG Agricultural District.

Property located: Part of the E. 346.5' of the W. 742.5' of the S/2 SE/4 of Section 31, T18N, R14E; 10617 E. 121<sup>st</sup> St. S.

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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:** Friday, August 26, 2011  
**RE:** Report and Recommendations for:  
BBOA-543 – Gary McDaniel

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**LOCATION:** – 10617 E. 121<sup>st</sup> St. S.  
– Part of the E. 346.5’ of the W. 742.5’ of the S/2 SE/4 of Section 31, T18N, R14E

**LOT SIZE:** 8 acres, more or less

**ZONING:** AG Agricultural District

**REQUEST:** A Variance (1) from the nonconforming use/structure replacement restriction of Zoning Code Section 11-11-3.G, and (2) from any other Zoning Code restriction preventing the replacement of an office building serving the Sunnyside Gardens / Sunnyside Nursery business, including allowing a temporary prefabricated / manufactured building during the period of construction, all for property within the AG Agricultural District

**SURROUNDING ZONING AND LAND USE:**

**North:** AG; A 46-acre agricultural tract.

**South:** AG, RS-1, & RS-3; Agricultural, including the 7.5-acre vacant, unbuilt Lon-Jan-Addition zoned RS-1, and rural residential along 121<sup>st</sup> St. S. The unplatted “Haikey Creek Farm” subdivision zoned RS-1 and AG is located to the southeast and centered along S. 109<sup>th</sup> E. Ave. The Chisholm Ranch residential subdivision zoned RS-3 is located to the southwest at S. 105<sup>th</sup> E. Ave.

**East:** AG; A 46-acre agricultural tract and agricultural and rural residential tracts along 121<sup>st</sup> St. S.

**West:** AG & RS-3; Agricultural and rural residential along 121<sup>st</sup> St. S., and the Contract Drapery & Blind, Inc. business at 10525 E. 121<sup>st</sup> St. S., all zoned AG. The Park at Southwood 3rd residential subdivision is to the northwest and is zoned RS-3.

**COMPREHENSIVE PLAN:** Low Intensity + Industrial Area (all except the north approximately 400’) + Vacant, Agricultural, Rural Residences, and Open Land (north approximately 400’)

**PREVIOUS CASES:** (not a complete list)

**BBOA-74 – Elsie McLearan** – Request for Special Exception to allow mobile home(s) in the AG district for the E. 346.5’ of the W. 742.5’ of the S/2 SE/4 of Section 31, T18N, R14E, 10.5 acres (included subject property) – BOA Conditionally Approved 06/10/1980.

**BZ-145 – Eddie McLearan** – Request for rezoning from AG to CG for the E. 346.5’ of the W. 742.5’ of the S/2 SE/4 of Section 31, T18N, R14E, 10.5 acres (included subject property) – Withdrawn by Applicant by phone 09/06/1983 per notes in case file.

**BBOA-121 – Eddie McLearan** – Request for Special Exception for a [Use Unit 4] “nursery (horticultural)” in the AG district for the N. 630’ of the E. 346.5’ of the W. 742.5’ of the S/2 SE/4 of Section 31, T18N, R14E (included north 5 acres of subject property) – BOA Approved 10/11/1983.

**BBOA-270 – Gary McDaniel** – Request for Special Exception to allow to allow retail sales as a “seasonal retail horticultural stand” accessory use in the AG district (See Zoning Code Section 11-7A-3.A Table 2) for all of the land the Applicant then owned in the E. 346.5’ of the W. 742.5’ of the S/2 SE/4 of this Section (most of the 8-acre parcel as it now exists) – BOA Approved 01/04/1994.

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

**BBOA-272 – Sue Trumbo** – Request for Variance from the minimum lot size requirement in the AG district to allow a Lot-Split (BL-175) to create north and south halves of a 2-acre tract (E. 132’ of the S. 660’ of the of the W. 528’ of the SW/4 of the SE/4 of this Section); lot abuts the subject

property to the west at 10101/10101-B\* E. 121<sup>st</sup> St. S. (the N/2 thereof is a separate parcel that now belongs to Applicant) – BOA Approved 02/07/1994.

BBOA-273 – Sue Trumbo – Request for Variance from the frontage requirement in the AG district to allow a Lot-Split (BL-175: see below and see BBOA-272 above) – BOA Conditionally Approved 02/07/1994.

BL-175 – Sue Trumbo for Elsie McLearn – Request for Lot-Split to create north and south halves of a 2-acre tract (E. 132' of the S. 660' of the of the W. 528' of the SW/4 of the SE/4 of this Section), lot abutting the subject property to the west 10101/10101-B\* E. 121<sup>st</sup> St. S. (the N/2 thereof is a separate parcel that now belongs to Applicant) – PC Approved 03/02/1994.

**BACKGROUND INFORMATION:**

In a meeting on January 14, 2011, Applicant Gary McDaniel informed Staff that he intends to construct a new building to house the general business office for the Sunnyside Gardens / Sunnyside Nursery business. The general business office would have sales and administrative (bookkeeping) functions, an employee lounge, and similar office functions in support of the nursery business, which the Applicant stated is wholesale only and sells flowers and bedding plants to landscapers, primarily, but not the general public (e.g. selling bulk quantity landscaping products from pallets, etc.). The Applicant stated that the “L”-shaped building located behind the first two greenhouses on the property is the general business office, and that, after the construction of the new building, the old one will be demolished due to its age and condition. The Applicant has provided photographs showing this building’s deteriorated condition.

At that time, the Applicant planned to construct the new building on the Applicant’s 1 acre tract at 10101/10101-B E. 121<sup>st</sup> St. S., which he had recently acquired. Staff informed the Applicant that this would require rezoning with a PUD, a plat, and a Detailed Site Plan. The Applicant decided to construct the new building elsewhere on the 8-acre subject property, which is legally nonconforming as to use, owing to a combination of Special Exception approvals granted by the Board of Adjustment.

It appears that the Board of Adjustment approved the main part of the Sunnyside nursery operation for a Special Exception for a [Use Unit 4] “nursery (horticultural)” in the AG district per application BBOA-121 on 10/11/1983. A Use Unit 4 horticultural nursery was in fact a use by right in the AG district as of the January 01, 1976 Zoning Code. It has since become a Use Unit 3 and is still allowed by right in AG.

In the January meeting, the Applicant informed Staff that he used to own the Sunnyside Gardens retail sales facility at 11660 S. Memorial Dr., but sold it at some point in time. It would appear that the subject property used to be a purely horticultural nursery, perhaps serving the retail location on Memorial Dr., but transitioned at some point in time to become a self-contained nursery complete with sales functions. Per BBOA-270 on 01/04/1994, the Board of Adjustment granted a Special Exception to all of the land the Applicant (Gary McDaniel) then owned in the E. 346.5' of the W. 742.5' of the S/2 SE/4 of this Section (most of the 8-acre parcel as it now exists), to allow retail sales as a “seasonal retail horticultural stand” accessory use in the AG district (See Zoning Code Section 11-7A-3.A Table 2).

The previous Zoning Code dated January 01, 1976 included a “greenhouse” as a Use Unit 15 Other Trades and Services commercial use (Section 1015.2), and there was no line item related to a nursery business use under the Use Unit 3 Agriculture section (Section 1003). At some point in time, it appears that the Zoning Code was amended. The Use Unit 15 line item is now listed as “Greenhouse, retail sales,” and a “Horticultural nursery” is listed as a Use Unit 3 Agriculture use. However, Zoning Code Section 11-9-3.C provides: “Use Conditions: Horticultural nursery permits the growing of plant stocks only, and permits no retail sales on site.” (emphasis added).

Using the description the Applicant provided for the Sunnyside business operation, under the current Zoning Code, the Sunnyside land use does not appear to comport to an “accessory seasonal fruit and vegetable stand” as contemplated by Zoning Code Section 11-7A-3.A Table 2. Rather, it more accurately falls under the Use Unit 15 “Greenhouse, retail sales” business use. Use Unit 15 is not allowed in the current AG Agricultural District by right or by Special Exception.

**ANALYSIS:**

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\* Not to be confused with the ½-acre tract to the east of the subject property which also has an associated address of 10101 E. 121<sup>st</sup> St. S., and which also belongs to the Applicant.

Subject Property Conditions. The subject property of 8 acres, more or less, contains Sunnyside Gardens / Sunnyside Nursery, a Use Unit 15 “Greenhouse, retail sales” nursery business. It contains dozens of greenhouse buildings, the general business office building, and ancillary buildings supporting the nursery business. From 121<sup>st</sup> St. S., the tract stretches is 1320’ (1/4 mile) deep. Although primarily 346.5’ in width, due to intervening frontage parcels, the subject property has only 114.5’ of frontage on 121<sup>st</sup> St. S. The subject property is zoned AG.

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. As noted in Staff’s letter to Applicant Gary McDaniel dated 01/14/2011, the land use is currently recognized as a Use Unit 15 “Greenhouse, retail sales,” even though the sales are reportedly wholesale and not directed to the general public. Sales occur on the subject property. There is no line item in the Zoning Code corresponding with a purely “wholesale” greenhouse or nursery sales business. It appears that the Tulsa Zoning Code also provides that a “greenhouse” is a Use Unit 15 in Tulsa.

Use Unit 15 is not permitted in the AG district by right or by Special Exception. However, the land use is legally nonconforming, owing to the approvals conferred by BBOA-121 and BBOA-270.

As mentioned elsewhere in this report, the Applicant desires to tear down an aging general business office building on the subject property and construct a new one for this purpose. Bixby Zoning Code Section 11-11-3.G provides for the current situation, and is as follows:

“G. Should the structure containing a nonconforming use be damaged or partially destroyed to the extent of more than fifty percent (50%), but less than seventy five percent (75%), of its current replacement cost at time of damage, the restoration of the structure shall be subject to the board of adjustment’s finding after adherence to the procedural requirements for a special exception, that the contemplated restoration is necessary for the continuance of the nonconforming use, and will not result in any increase of incompatibility with the present or future use of proximate properties. Should the structure containing a nonconforming use be damaged or destroyed to the extent of more than seventy five percent (75%) of its replacement cost at time of damage, the nonconforming use shall not thereafter continue or be resumed. (Ord. 272, 4-2-1974)” (emphasis added)

Demolition of the building would, by definition, destroy it to the extent of 100% of its replacement cost. A Variance from Zoning Code Section 11-11-3.G would therefore be required to rebuild the general business office building on the legally nonconforming 8-acre tract.

The Applicant has stated that the new building’s location would be different than the current location, and that a temporary construction trailer would be utilized only during the period of construction. The Applicant has not provided information on where the new building, or the temporary building, would be located.

By this application, the Applicant is requesting a Variance “from the nonconforming use/structure replacement restriction of Zoning Code Section 11-11-3.G, and (2) from any other Zoning Code restriction preventing the replacement of an office building serving the Sunnyside Gardens / Sunnyside Nursery business, including allowing a temporary prefabricated / manufactured building during the period of construction, all for property within the AG Agricultural District.”

The second Variance component is intended to be a ‘catch-all,’ in the event other provisions of the Zoning Code would prevent the replacement of the office building, but were inadvertently overlooked when determining the number of and scope of Variances necessary. The second component also explicitly states that the Applicant may make use of a temporary prefabricated / manufactured building during the period of construction.

Both Variance requests are inextricably related with a common nexus: The proposal to replace an existing nonconforming office building on the subject property. Therefore, this report will not attempt to divide the separate Variance components into different report sections.

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

*“Our office is very busy during our selling seasons. In between those seasons, it is used by the employees only. There are no comparable buildings in the area as there are not many businesses like ours. There is nothing else we feel making our facility peculiar or extraordinary in regards to this application.”*

*Staff believes that the unique circumstances undergirding the zoning approval for the commercial nursery on the subject property, i.e. BBOA-121 and BBOA-272, the amendments to the Zoning Code evidently subsequent to BBOA-121, that the land use changed to become retail-oriented after the Applicant’s sale of the Memorial Dr. location, and the fact that the nursery land use is now legally nonconforming, should together be seen as Peculiar, Extraordinary, and/or Exceptional Conditions or Circumstances in satisfaction of this test and standard. No other properties in the AG district or any district in Bixby can claim to have the same or similar conditions or circumstances, especially recognizing that BBOA-121 and BBOA-272 are specific to the subject property.*

*Unnecessary Hardship. The Applicant claims that an unnecessary hardship would be caused by the literal enforcement of the Zoning Code because “I want to continue family-owned business. Original [building] is in poor condition.”*

*One can infer from the Applicant’s statement the claim is that it would be a hardship on the business if the existing building could not be replaced. Staff agrees with such a claim. The disallowance of the maintenance and replacement of aging and/or functionally obsolete buildings required to sustain an existing business concern should be recognized as 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 “replacing existing bldg.”*

*One can infer from the Applicant’s statement that the claim is that the status quo will be maintained. The old building supporting the existing business will be demolished when a new one is constructed. Staff does not disagree with this argument and does find it relevant.*

*Staff believes that the primary reason for prohibiting the replacement of a legally nonconforming use is to ensure that nonconformities are abated in due course through attrition. 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 general office building with a newer one. The Board should consider balancing the public interest in the abatement of a nonconforming use with the property owner’s interest in preserving a vested property right.*

*In this regard, it is evident that this business has existed on the subject property in some form or another since approximately 1983, and with its present retail-sales functions since approximately 1994, with no records found of any complaints. A wholesale nursery business should not generate the volume of traffic that a consumer-oriented retail nursery would present.*

*Further, until the past couple years, the former Juniper Hills Farm greenhouse, nursery, garden center, and landscape business property of 22 acres, more or less, was located to the southwest of the subject property at 9740 E. 121<sup>st</sup> St. S. That acreage has most recently been planned for a future phase or phases to the Chisholm Ranch residential development. As demonstrated in that case, it would appear that the continued maintenance of spatially-intensive nursery operations may help forestall the premature fragmentation of large, conveniently-developable parcels of land. In other words, if the subject property maintains the existing nursery business, it is more likely to maintain its current, relatively-large size, making its future redevelopment prospects more viable by helping to ensure the broadest range of highest and best uses and development configurations. This could also potentially help preserve a relatively higher property value than if prematurely subdivided, and by extension, preserve the prospect of more valuable development outcomes. Redevelopment at the highest and best use can generally be recognized as being in the best interest of the City of Bixby.*

*The Bixby Comprehensive Plan designates most of the subject property as Industrial Area, which appears to recognize the existence of this non-residential land use at the time it was adopted in or around 2002. An argument could be made that this designation could be used to support Zoning approval applications (such as this one) consistent with the continued maintenance of the existing business.*

*For all the 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.* 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 any prefabricated / manufactured building complying with all applicable Building Code standards and regulations and being removed immediately upon the completion of the replacement building.

Applicant Gary McDaniel clarified with Erik Enyart that it was not “Sunnyside Gardens” or “Sunnyside Nursery” and was only known as “Sunnyside Greenhouse.” Mr. McDaniel stated that Sunnyside Nursery is located on Memorial Dr. Mr. Enyart clarified with Mr. McDaniel that he had previously owned the Memorial Dr. location but sold it. Mr. Enyart stated that this facility began, by a previous owner, as a horticultural nursery in the 1980s, evidently pursuant to the first Board of Adjustment approval, and that it had since started to provide retail sales. Mr. McDaniel stated that it did not provide retail sales [to the general public]. Mr. Enyart clarified with Mr. McDaniel that the business sells from the subject property to contractors on wholesale. Mr. Enyart asked when wholesale sales began to occur from the subject property and Mr. McDaniel responded that it has been wholesaling since the 1980s. Mr. Enyart asserted that the property was legally nonconforming due to the two (2) Board of Adjustment approvals previously granted.

Gary McDaniel stated that the old building was falling in and that he needed to replace it.

Chair Jeff Wilson asked Gary McDaniel when he would want to start on the building, and how long the temporary building would be in place. Mr. McDaniel stated that he would start in November, by dismantling the old building and building the new one. Mr. McDaniel stated that it would not be a temporary “building” but would be a “trailer to work out of while we build the new one.”

Larry Whiteley asked if the temporary trailer would be removed after construction, and Gary McDaniel responded “Yes.”

Erik Enyart clarified that his recommendation was for “Approval, subject to any prefabricated / manufactured building complying with all applicable Building Code standards and regulations and being removed immediately upon the completion of the replacement building.”

Chair Jeff Wilson asked if the other gentleman was present to speak on this item. Neal Eckert of 6685 E. 126<sup>th</sup> St. S. stated that he worked for Mr. McDaniel and indicated support for the application.

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

There being no further discussion, Darrell Mullins made a MOTION to APPROVE BBOA-543 subject to any prefabricated / manufactured building complying with all applicable Building Code standards and regulations and being removed immediately upon the completion of the replacement building. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

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

4. **BBOA-544 – Khoury Engineering, Inc.** Discussion and possible action to approve a Variance (A) from the 150’ minimum lot-width / minimum ground sign spacing standard of Zoning Code Section 11-9-21.C.9.a, (B) from the maximum display surface area restrictions of Zoning Code Section 11-9-21.D.3 to allow three (3) square feet of display surface area per ground sign, and (C) from any other Zoning Code restriction preventing the erection of three (3) freestanding ground signs at three (3) square feet in display area each, all for property within the CS Commercial Shopping Center District.  
Property located: The 11800 : 11900-block of S. Memorial Dr.
- 

Chair Jeff Wilson introduced the item.

Erik Enyart stated that the Applicant had called him and said he was not able to attend due to being stuck in traffic.

The Board members discussed what to do with the application. It was generally agreed it would be best to Continue it to the October regular meeting.

There being no further discussion, Chair Jeff Wilson made a MOTION to CONTINUE BBOA-544 to the October 03, 2011 regular meeting. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

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

Chair Jeff Wilson asked Erik Enyart to request the Applicant provide an updated exhibit accurately depicting the property lines as proposed by the current Lot-Split application, and provide all the details needed to give the Board a full picture of what was being requested. The other Board members indicated agreement and Mr. Enyart agreed to make this request.

ADJOURNMENT

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

ROLL CALL:

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

Meeting adjourned at 6:20 PM.

APPROVED BY:

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

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