

**MINUTES  
BOARD OF ADJUSTMENT  
CITY HALL COUNCIL CHAMBERS  
116 W. NEEDLES AVE.  
BIXBY, OK 74008  
October 03, 2011 6:00 PM**

**STAFF PRESENT:**

Erik Enyart, AICP, City Planner  
Patrick Boulden, Esq., City Attorney

**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, Dave Hill, and Larry Whiteley.

Members Absent: None.

**MINUTES**

1. Approval of Minutes for September 06, 2011

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

ROLL CALL:

AYE: Mullins, Whiteley, Wilson, & King

NAY: None.

ABSTAIN: Hill.

MOTION CARRIED: 4:0:1

Dave Hill stated that he was Abstaining as he was not present at that meeting.

Erik Enyart advised Chair Jeff Wilson that Applicant Malek Elkhoury had called him just prior to the meeting and said he was stuck in traffic, and asked that his item be moved to the end of the Agenda. Chair Jeff Wilson declared BBOA-544 be moved to the end of the agenda.

NEW BUSINESS

- 3. **BBOA-545 – Sydney Hull Freeman for Georgann Hull.** Discussion and possible action to approve (1) a Variance from the Zoning Code including, but not limited to, Section 11-8-5, to be permitted to maintain three (3) dwellings on a singular lot of record, and (2) a Variance from certain bulk and area standards for an existing lot of record in the AG Agricultural District and CS Commercial Shopping Center District.  
Property located: Part of the W. 365’ E/2 SE/4 SW/4 Section 15, T17N, R13E; 5801 and 5815 E. 151<sup>st</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:** Wednesday, September 28, 2011  
**RE:** Report and Recommendations for:  
 BBOA-545 – Sydney Hull Freeman for Georgeann Hull

**LOCATION:** – 5801 and 5815 E. 151<sup>st</sup> St. S.  
 – Part of the W. 365’ E/2 SE/4 SW/4 Section 15, T17N, R13E  
**LOT SIZE:** Approximately 10 acres, more or less  
**ZONING:** AG Agricultural District & CS [Commercial] Shopping Center District  
**REQUEST:** A Variance from (1) the Zoning Code including, but not limited to, Section 11-8-5, to be permitted to maintain three (3) dwellings on a singular lot of record, and (2) from certain bulk and area standards for an existing lot of record in the AG Agricultural District and CS Commercial Shopping Center District

**SURROUNDING ZONING AND LAND USE:**  
**North:** RM-3/RS-3/PUD 3; The White Hawk Golf Club and single-family residential in Celebrity Country.  
**South:** (Across 151<sup>st</sup> St. S.) CG, OM, & AG; The 150-acre King of Kings Lutheran Church, Inc. agricultural tract to the zoned CG, OM, RM-3, and RE and agricultural and rural residential tracts to the southeast.  
**East:** CS, AG, & CG/OL/RS-3/PUD 62; Vacant, rural residential, and agricultural tracts fronting on 151<sup>st</sup> St. S.  
**West:** RM-3/RS-3/PUD 3; The White Hawk Golf Club and single-family residential in Celebrity Country and White Hawk Estates.

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

**PREVIOUS/RELATED CASES:**  
**BZ-300 – Jerry Hull** – Request for rezoning to CS for the south approximately 3.3 acres of the 10-acre tract subject property – Approved in January, 2004 (Ord. 883).  
**AC-04-04-01 – JR Donelson for Jerry Hull/Trophy Tack Co.** – Request for building plan [and detailed site plan] approval for “Trophy Tack Co.,” a commercial reuse of the subject property evidently converting the existing single-family home at 5801 E. 151<sup>st</sup> St. S. to a commercial business – Architectural Committee Conditionally Approved 04/19/2004 (evidently never redeveloped as approved).  
**BBOA-516 – Georgeann Hull** – Request for (1) A Variance from Zoning Code Section 11-8-5 to be permitted to maintain two (2) dwellings on a singular lot of record, and (2) a Variance from certain bulk and area standards for an existing lot of record in the AG Agricultural District for subject property – BOA Conditionally Approved 02/01/2010.

**RELEVANT AREA CASE HISTORY:**

PUD 1 / BZ-86 – Request for PUD and RS-3, RD, RM-2, OL, OH, and CS zoning for approximately 600 acres (including Celebrity Country, Sitrin Center, etc.) abutting subject property on the west – Both Approved April 16, 1980 (Ord. 402 and 403).

PUD 3 – Replaced PUD 1 but retained underlying zoning on property abutting subject property to the west – Approved 10/04/1982 (Ord. 465).

BZ-185 – J. Edward Bates for Preferred Investments – Request for rezoning to CG, OM, RM-3, and RE for the 150-acre King of Kings Lutheran Church, Inc. agricultural tract to the south – Approved in May, 1988 (Ord. 585).

BL-150 – Joseph McCormick – Request for Lot-Split approval for an approximately 1 acre abutting to the east at 5805 E. 151<sup>st</sup> St. S. – PC Approved 12/06/1989.

BZ-295 – Norbert Young – Request for rezoning to CS for approximately 1 acre abutting to the east at 5805 E. 151<sup>st</sup> St. S. – Withdrawn by Applicant September 15, 2003 upon sale of the property.

BZ-315 – B. Jack Smith – Request for rezoning to CG for an 8-acre vacant tract abutting the subject property to the east – Approved for CS in May, 2006 (Ord. 941).

PUD 62 – Hawkeye – Hawkeye Holding, LLC – Request for rezoning to CG and 75 acres for a residential and commercial development abutting the subject property to the east – PC Recommended Conditional Approval 01/21/2008 and City Council Approved 02/11/2008 (Ord. 991).

BBOA-508 – Tim Remy for First Baptist Church Bixby – Request for Special Exception to allow a Use Unit 5 church in the AG Agricultural District for a 12.435-acre tract to the southeast at the 6000-block of East 151<sup>st</sup> St. S. – BOA Conditionally Approved 08/03/2010.

#### BACKGROUND INFORMATION:

Per BBOA-516, the Applicant was approved for a Variance from Zoning Code Section 11-8-5, in recognition of the two (2) existing houses on the property. This Variance removed the nonconforming status of the property and allowed the City of Bixby to issue a permit for the construction of an additional accessory building in the AG-zoned portion of the subject property.

The Applicant has expressed to Staff that they would like to be permitted to construct a new, approximately 3,000 square foot dwelling toward the north end of the subject property in the AG-zoned portion thereof.

In accordance with the Bixby Zoning Code Section 11-4.3.B, in order to secure the approval of a Board of Adjustment application, within 90 days of the approval, the Decision of Record shall be filed of record with the County Clerk. For BBOA-516, Staff provided the Decision of Record, signed by the Board of Adjustment Chair and attested to by Staff, to the Applicant / property owner for signature and recording. Due to delays in Decision of Record instrument development and miscommunication, the documents were not signed or recorded within the 90-day approval window, and the approval is thus now void. Approval of this application would reinstate the conforming status of the subject property for the two (2) existing dwelling units and, as requested, would also grant approval for the construction of a third dwelling unit.

#### ANALYSIS:

Property Conditions. The subject property is a 10-acre agricultural and rural residential tract zoned AG and CS. It contains a house on the south end of the tract, and a newer house along the west side of the north half of the tract. The subject property slopes downward moderately to the north and east to an unnamed tributary of Posey Creek. According to Tulsa County Assessor's parcel data, it appears that the original house, 5801 E. 151<sup>st</sup> St. S., was built on the south end of the tract in 1955. According to building permit records, the northerly house, 5815 E. 151<sup>st</sup> St. S., was built in 2004. There are other existing accessory buildings on the property as per previously submitted information. Pursuant to the approval granted per BBOA-516, the Applicant was permitted to construct a 30' X 50' (1,500 square feet) and 14' tall accessory building to the north and east of the northerly dwelling on the AG-zoned part of the subject property.

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 to Alleviate the Unnecessary Hardship.

Nature of Variance. The Applicant is requesting (1) a Variance from the Zoning Code including, but not limited to, Section 11-8-5, to be permitted to maintain three (3) dwellings on a singular lot of record, and (2) a Variance from certain bulk and area standards for an existing lot of record in the AG Agricultural District and CS Commercial Shopping Center District.

Zoning Code Section 11-8-5 provides:

**"11-8-5: ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD:**

Not more than one single-family dwelling may be constructed on a lot, except in the case of a lot which is within an approved planned unit development. (Ord. 272, 4-2-1974)"

The subject property has two (2) dwelling units, and so was not in compliance with this restriction of the Zoning Code, until BBOA-516 was approved. The Applicant is now proposing to construct a third dwelling on the acreage.

As was done with BBOA-516, the second Variance request was advertised to the Public in the event there were other existing deficiencies the current lot of record maintains as it concerns required bulk and area standards in the AG district. The Zoning Code does not anticipate the situation where singular lots of record are allowed to host multiple zoning districts, absent a PUD. Within this unusual arrangement on the subject property, where the front/south approximately 3.3 acres is zoned CS while the balance remains zoned AG, and there are two (2) dwellings on the singular lot, there may be certain bulk and area restrictions which are thereby violated. If there are any, the second part of this Variance application would absolve them, to the extent of allowing additional buildings to be constructed on the subject property.

Both Variance requests are inextricably related with a common nexus: Approval of three (3) dwelling units on the subject property. Further, the different Zoning Code regulations from which the Variance has been requested all operate to a singular effect: the prohibition of three (3) dwelling units. Therefore, this report will not divide the separate Variance components into different report sections.

Detailed Analysis. To answer the questions on the application form asking how the proposed Variance would meet the tests and standards for Variance, the Applicant has advanced the following arguments, which Staff acknowledges and discusses as follows:

1. Hardship: "It would prevent a home as [would] otherwise be allowed."

One can infer that the suggested hardship is that the Applicant would be prevented from constructing a third house, absent the requirement to divide the land into separate lots, which would also necessitate a different Variance or Variances or a rezoning and Lot-Split application. When considering the No Substantial Detriment arguments presented in this report, Staff would agree that this could be considered an Unnecessary Hardship.

2. Peculiarity, Extraordinary, or Exceptional Conditions or Circumstances: "10+ ac[re] tract has 2 existing homes / fewer than similar surrounding tracts."

A brief survey of aerial and Assessor's parcel data for the surrounding area does not immediately indicate the existence of any other tracts containing multiple dwelling units (with the exception of the properties at 5724 and/or 5724 1/2 and/or 5728 E. 141<sup>st</sup> St. S. located approximately one (1) mile to the north; cf. BBOA-513).

The subject property has had one (1) house on the south end of the lot constructed in or around 1955. The south approximately 3.3 acres was zoned CS in January 2004 and the second house was constructed in the back, AG-zoned area of the lot in 2004.

A Use Unit 6 single-family dwelling is allowed in the CS district by Special Exception. Therefore, upon the rezoning of the southerly 3.3-acre area and the existing house at 5801 E. 151<sup>st</sup> St. S. in 2004, that house became legally nonconforming. It appears, based on the Architectural Committee case records (Case # AC-04-04-01), that it was the intent of the owner at that time to redevelop the front/south house to a commercial use, but this was never done.

Perhaps more importantly, the subject property has extraordinary or exceptional conditions or circumstances which are peculiar to the subject property by virtue of the building permit approved in 2004.

The Zoning Code restricts the issuance of building permits which would violate the Zoning Code. By approval of building permit in 2004, the City allowed the creation of this nonconformity. It is presumed the Applicant was not aware of the one (1) dwelling per lot restriction of the Zoning Code, and relied upon the City of Bixby's building permit approval. If this is the case, by no fault of the Applicant, an illegal nonconformity was created, with sanction by the City of Bixby.

*Such extraordinary or exceptional conditions or circumstances are peculiar to the subject property and do not apply generally to other properties in the same district because such nonconformities are generally not permitted to be created by the City of Bixby within the AG or other districts, and a survey of existing AG districts in Bixby would likely prove this statement true.*

*All of these historic parcel and physical fact issues may be considered extraordinary or exceptional conditions or circumstances are peculiar to the subject property to the extent it concerns the existing two (2) dwellings.*

*However, such arguments do not appear to be immediately relevant to the request to be allowed to construct a third dwelling unit. The provided argument presented in the application does not appear to materially address this test and standard. Staff could not conceive any viable arguments in satisfaction of this test and standard. If the Board is amenable to this Variance, it should identify with the Applicant how the requested Variance would be in accordance with this test and standard provided in State Statutes and the Bixby Zoning Code.*

3. Finding of No Substantial Detriment or Impairment: *“The proposed home would be no different than those on similar tracts.”*

*The provided argument presented in the application does not appear to materially address this test and standard. However, Staff has considered other possible arguments in furtherance of this test and standard.*

*If three (3) tracts were created from the subject property of 10 acres, such as by an approved Lot-Split (with legal access to the back tract afforded by easement and Variance granted from the frontage requirement), the three (3) tracts would appear to otherwise comply with the bulk and area standards of the Zoning Code.*

*Further, the same result could be achieved by a Lot-Split, but the Applicant would be required to divide the land into separate lots, which would also necessitate a different Variance or Variances or a rezoning. The Applicant has not expressed desire to divide the subject property. If the same end result could be achieved using alternative methods, it stands to reason that the Variance can be granted without causing substantial detriment to the public good or impair the purposes, spirit and intent of the Zoning Code or the Comprehensive Plan.*

4. Finding of Minimum Necessary:

*The application form does not provide this item in the form of a question, and the submitted information does not contain any arguments in regard to this item. Recognizing that the primary Variance requests relieve to allow three (3) houses, the three (3) should be considered the Minimum Necessary to Alleviate the Unnecessary Hardship.*

*On the secondary Variance, Staff would note that this standard should be considered not applicable, or otherwise inherently satisfied, as this Variance seeks a qualitative and not quantitative form of relief. Staff Recommendation. Except as noted otherwise hereinabove, Staff believes that the arguments provided by the Applicant and Staff appear to substantially meet the tests and standards of the Zoning Code and State Statutes.*

*For the Peculiarity, Extraordinary, or Exceptional Conditions or Circumstances test and standard, the Board may wish to consider the arguments presented in the application, 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 provided in State Statutes and the Bixby Zoning Code.*

*Absent this finding, Staff would recommend approval only of the two (2) existing dwelling units.*

Larry Whiteley asked why the Board should [approve the Variances] when the Applicant could divide the property. Erik Enyart confirmed that the same result could be achieved by a Lot-Split, but that this would necessitate a different Variance or Variances or a rezoning, and the Applicant had not indicated they wanted to divide the property.

One of the Board members indicated concern for setting a precedent. Erik Enyart stated that, to avoid the appearance of setting a precedent, he would point out that there are unique circumstances here, including a 10-acre tract with multiple Zoning districts, that it was already

granted a Variance for two (2) of the three (3) dwellings, and that all cases are unique and are determined on their own [specific] merits.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Sydney Freeman of 5801 E. 151<sup>st</sup> St. S. was present and stated that she had been living in the house up front, her mother's [old] house, and would love to be able to construct a third house on the property. Ms. Freeman stated that [her family] wanted to keep [all the land] in the family, and allow [her mother] to live out her days there.

Darrell Mullins asked why they did not move to separate out [the new] house, and asked if it was not true that there was some law exempting agricultural land. Erik Enyart stated that there are some benefits for bona fide agricultural uses and, in some cases, "Agricultural" Zoning may be recognized by some statutes for some benefits. Mr. Enyart indicated that he was not aware of any such laws that would apply to this situation. Mr. Mullins speculated that he may be thinking of this along the lines of tax purposes. Mr. Enyart stated that he was not aware if there was some threshold used by the County Assessor.

Larry Whiteley clarified with Erik Enyart that house would have to comply with all applicable building codes.

Darrell Mullins asked why the land could not be split. Sydney Freeman stated that [her family wanted the land to stay] "all in the family but I'm open to whatever this board wants to do."

Chair Jeff Wilson stated that he was "not sure what the hardship is other than not doing a Lot-Split."

Erik Enyart stated that the Applicant actually cited the hardship in the application: the Applicant was prevented from having a third house to which they would be otherwise entitled if not for the one (1) dwelling unit per tract rule.

One of the Board members asked if the outbuilding was ever constructed [pursuant to BBOA-516] and Erik Enyart and Sydney Hull confirmed that it had been.

Erik Enyart stated that the Decision of Record for BBOA-516 had not been recorded within the 90 days required by the Zoning Code, and so it was technically no longer approved. Mr. Enyart stated that, if the Board was not favorable to the Variance, it should at least approve it to the extent of allowing the two (2) existing houses, to restore the approval of BBOA-516 and the conforming status of the property.

Chair Jeff Wilson clarified with Erik Enyart that a Lot-Split would require a survey of the property showing the property lines, easements, access, how the [back and] intervening tracts would have access to a public street, and utilities.

Patrick Boulden introduced himself as the City Attorney and stated that he had previously been a city attorney for the City of Tulsa. Mr. Boulden stated that the purpose of the hardship [test] was to determine if the Zoning Code in some way imposes a hardship that is unnecessary. Mr.

Boulden stated that a hardship cannot be self-imposed, and that the third dwelling gives the appearance of a self-imposed hardship. Mr. Boulden stated that it would be difficult to establish a hardship in this case. Mr. Boulden stated that he would not put his judgment for the Board's. Mr. Boulden stated that one cannot create a circumstance and then argue it has created a hardship. Mr. Boulden stated that the hardship must come from the Zoning Code as a constitutional [regulatory] "taking" of property and regulating it. Mr. Boulden stated that, when the Zoning Code creates an imposition on the free use of property – if unnecessary in this case – the Board of Adjustment is a "relief valve."

Larry Whiteley clarified with Erik Enyart that this would not set a precedent as all other cases would be considered on their own [merits].

Larry Whiteley made a MOTION to APPROVE BBOA-545. Murray King SECONDED the Motion. Roll was called:

**ROLL CALL:**

AYE: Whiteley, Hill, & King  
NAY: Wilson.  
ABSTAIN: Mullins.  
MOTION CARRIED: 3:1:1

Erik Enyart stated that the Decision of Record would be signed at the next meeting, to be held the first Monday in November, and after that time he would mail it to the Applicant to be signed, notarized, and recorded with the Tulsa County Clerk. Mr. Enyart stated that the letter would include instructions for all of this. Murray King clarified with Mr. Enyart that the property owner would be the one to sign the Decision of Record.

4. **BBOA-546 – Sabre Industries, Inc.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-11-6.B to allow the replacement of a structurally nonconforming communications tower / antenna support structure in the AG Agricultural District.  
Property located: Part of the N/2 of Government Lot 4 (NW/4 NW/4) Section 02, T16N, R14E; Southwest corner of the intersection of 181<sup>st</sup> St. S. and 161<sup>st</sup> E. Ave. / Bixhoma Lake Rd.

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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:** Wednesday, September 28, 2011  
**RE:** Report and Recommendations for:  
BBOA-546 – Sabre Industries, Inc.

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**LOCATION:** – Part of the N/2 of Government Lot 4 (NW/4 NW/4) Section 02, T16N, R14E  
– Southwest corner of the intersection of 181<sup>st</sup> St. S. and 161<sup>st</sup> E. Ave. (Bixhoma Lake Rd.)  
**LOT SIZE:** 14 acres, more or less

ZONING: AG Agricultural District  
REQUEST: Special Exception per Zoning Code Section 11-11-6.B to allow the replacement of a structurally nonconforming communications tower / antenna support structure in the AG Agricultural District.

SURROUNDING ZONING AND LAND USE: AG & RE; Vacant/wooded and rural residential, with the City of Bixby's former water plant and related facilities to the east and north.

COMPREHENSIVE PLAN: (1) Development Sensitive and (2) Vacant, Agricultural, Rural Residences, and Open Land.

PREVIOUS/RELATED CASES: (Not necessarily a complete list and does not include TMAPC-jurisdiction areas)

BZ-91 – Jack Spradlin for Harold Stevenson – request for rezoning approximately 27.79 acres abutting subject property to the east from AG to RE – PC Recommended Approval on 07/28/1980 and City Council Approved 08/18/1980 (Ord. 409).

Preliminary and Final Plat of “Red ‘S’ II Addition” – Request for Preliminary and Final Plat approval for “Red ‘S’ II Addition” (reference BZ-91) (abutting subject property to the east) – PC recommended Approval 07/28/1980 and City Council Approved 10/15/1980.

BZ-93 – Bill Barlow – Request for rezoning from “AG” to RE for Lot 1, Block 1, Bixhoma Lake Estates (abutting subject property to the west) – PC Recommended Approval 08/25/1980 and Approved by City Council 09/15/1980 (Ord. 412).

Preliminary Plat of Replat of Lot 1, Block 1, Bixhoma Lake Estates – Request for Preliminary Plat approval for Lot 1, Block 1, Bixhoma Lake Estates (abutting subject property to the west) – Conditionally Approved by PC on 08/25/1980.

PUD 33 – Allen Smith – Request for PUD overlay zoning for Lot 1, Block 1, Bixhoma Lake Estates (abutting subject property to the west) – PC Recommended Approval 06/21/2004 and City Council Approved 07/12/2004 (Ord. 888).

Preliminary Plat of Bixhoma Gated Community – Request for Preliminary Plat approval for a 14-lot subdivision from Lot 1, Block 1, Bixhoma Lake Estates (abutting subject property to the west) – Approved by PC on 12/20/2004. Apparently Preliminary Plat and Earth Change Permit not placed on City Council agenda until engineering issues were resolved, which did not occur at that time.

Sketch Plat of Bixhoma Gated Community – Request for Preliminary Plat approval for a 14-lot subdivision from Lot 1, Block 1, Bixhoma Lake Estates (abutting subject property to the west) – PC reviewed 05/19/2008 but a Motion to Approve Failed by vote of 2 to 2 with 1 abstention. City Council Tabled 05/27/2008 with directions to the Applicant to meet and work out issues with the neighboring property owners.

RELEVANT AREA CASE HISTORY:

BACKGROUND INFORMATION:

Previously provided information regarding the existing tower in question is as follows:

FAA Study: 80-ASW-678-OE

FCC Registration: 1009960

Constructed: 1981

Tower Height: 280’

Tower Owner: OG&E

Property: Leased from AEP

Tower Coordinates: 35-53-59.02 N, 95-47-52.73 W

ANALYSIS:

Property Conditions. The subject property contains approximately 14 acres, is zoned AG, and is presently vacant and wooded except for two (2) tall communications towers. It appears to drain to the south to Bixhoma Lake. It has frontage on 181<sup>st</sup> St. S. and 161<sup>st</sup> E. Ave. (Bixhoma Lake Rd.).

The City of Bixby's former water plant and related facilities are located on a parcel of land abutting to the east and north.

General. The subject property contains two (2) tall Use Unit 4 communications towers (antenna support structures). The tower in question is the most easterly one. It was constructed in 1981, is 280’ in height, and is supported by guy wires (a “guyed tower”). According to the Applicant, it is not structurally capable of supporting new antenna loading, and so is to be torn down and replaced with a new tower of equal height.

The Zoning Code in effect at the time this tower was constructed (1981) was the 1976 Zoning Ordinance. Per that ordinance, a “transmitting tower (excluding amateur radio tower)” was a Use Unit 4, which was allowed by right in the AG zoning district. It appears that then, as now, the land was zoned AG in the City of Bixby. There were no special standards applicable to such “transmitting towers” at the time it was constructed. It appears that the tower separation standard (Zoning Code Section 11-9-4.C.1.j), the monopole design requirement (Zoning Code Section 11-9-4.C.1.c), and height limitation regulations (Zoning Code Section 11-9-4.C.1.a) were adopted at some time after the tower was constructed in 1981 (probably Ordinance # 753 in 1997). The tower is now noncompliant with these, and possibly other such regulations applicable to antenna support structures. The date of the construction of the other tower on this property would be irrelevant to the status of this tower as a legally nonconforming structure, since this tower was constructed in 1981.

Zoning Code Section 11-11-6.B provides the following applicable to this tower:

**“11-11-6: STRUCTURAL NONCONFORMITIES:**

A structure, lawfully existing at the effective date hereof or amendment of this title, but which would be prohibited by the terms of this title by reason of restriction on floor area, density, intensity, height, yards, its location on the lot, or other requirements concerning the structure, shall be deemed nonconforming and may continue, subject to the following provisions:

.....

B. Should such structure be damaged or partially destroyed by any means to the extent of more than fifty percent (50%) of its current replacement cost at time of damage, the restoration as a nonconforming structure shall be subject to the board of adjustment's finding, after adherence to the procedural requirements for a special exception, that its restoration to a conforming structure cannot reasonably be made in view of the nature and extent of the nonconformity and the nature and extent of the damages.”

Demolition of the tower would, by definition, destroy it to the extent of 100% of its replacement cost. Therefore, a Special Exception per Zoning Code Section 11-11-6.B would be required to rebuild the tower, which the Applicant has requested by this application.

Comprehensive Plan. The Comprehensive Plan designates the subject property as Development Sensitive and Vacant, Agricultural, Rural Residences, and Open Land.

This application does not request the approval of a specific land use, but rather a land use element. The Comprehensive Plan does not appear to contain any language which would specifically address the presently requested Special Exception. It should be recognized that the proposal is to replace the existing tower with another of identical height.

Surrounding Zoning and Land Use Compatibility. This application does not request the approval of a specific land use, but rather a land use element. Therefore, this analysis does not appear to apply to the presently requested Special Exception. It should be recognized that the proposal is to replace the existing tower with another of identical height.

Further, Staff has found no record of complaints regarding the tower, and its continued maintenance upon reconstruction should be no more injurious to the neighborhood or detrimental to the public welfare than the existing tower.

Staff Recommendation. For the reasons outlined in the analysis above, Staff believes that the requested Special Exception would be in harmony with the spirit and intent of the Zoning Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Staff recommends Approval.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Lila Burns of Sabre Industries, 555 Enterprise Dr., Edmond, OK 73013, was present and stated that OG+E was proposing additional antennas as a part of its “Smart Grid” system, but that the tower failed [a structural test] with the proposed load. Ms. Burns stated that the main issue was

the need for a more stout, stronger tower. Ms. Burns stated that this was critical infrastructure tied to the power grid.

Murray King asked how high the tower would be, and Ms. Burns stated that it would be 280' in overall height, which included the lightning rod. Mr. King clarified with Erik Enyart that the maximum tower height was 200'.

One of the Board members clarified with Erik Enyart the location of this tower in relation to Bixhoma Lake and the earthquake monitoring site to the southeast.

There being no further discussion, Jeff Wilson made a MOTION to APPROVE BBOA-546. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

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

OLD BUSINESS

2. (Continued from September 06, 2011)

**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.

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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:** Wednesday, September 28, 2011  
**RE:** Report and Recommendations for:  
BBOA-544 – Khoury Engineering, Inc.

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LOCATION: – The 11800 : 11900-block of S. Memorial Dr.  
– 11894 S. Memorial Dr.  
– Lot 6 and the S. 46.08' of Lot 5, Block 1, Bixby Centennial Plaza

LOT SIZE: 1.3 acres, more or less

ZONING: CS Commercial Shopping Center District

EXISTING USE: Vacant

REQUEST: 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

**SURROUNDING ZONING AND LAND USE:**

**North:** CS, OL, and CG/OL + PUD 54; The IBC Bank and the Jiffy Lube.

**South:** CS; A vacant lot, the Santa Fe Cattle Co. restaurant, and a Bank of Oklahoma bank branch, all in Bixby Centennial Plaza.

**East:** (Across Memorial Dr.) CS & CG; The Town and Country Shopping Center, the Bank of the West, a multi-tenant building at 11835 S. Memorial Dr. containing the Rod Smith Company real estate business and DTAGS, LLC (Digital Transport Agnostic Gateway Solutions) video services general business office, and the Advantage Motors of Oklahoma used car sales lot.

**West:** CS; Vacant lots in Bixby Centennial Plaza and an unplatted 11-acre vacant/agricultural tract zoned CS/OL + PUD 51.

**COMPREHENSIVE PLAN:** Corridor + Medium Intensity + Commercial Area

**PREVIOUS/RELATED CASES:** None found.

**BZ-279 – Charles Norman/Martha Plummer Roberts et al.** – Request for rezoning from AG to CS, OM, RM-1, and RS-2 for 73 acres, more or less, which became Bixby Centennial Plaza and Fox Hollow and an unplatted 11-acre tract later approved as PUD 51 – PC Recommended Approval as amended for CS, OM, OL, RS-3, and RS-2 on November 19, 2001 and Approved by City Council December 10, 2001 (Ord. # 842). Subject property included in that part approved for CS zoning.

**Preliminary Plat of Bixby Centennial Plaza** – Request for Preliminary Plat approval including subject property – PC Approved 07/17/2006 and City Council Approved 07/24/2006.

**Final Plat of Bixby Centennial Plaza** – Request for Final Plat approval including subject property – PC Approved 10/16/2006 and City Council Approved 10/23/2006 (plat recorded 04/04/2007).

**BL-350 – Khoury Engineering, Inc.** – Request for Lot-Split approval to separate the south 46.08' of Lot 5 of Bixby Centennial Plaza and add to Lot 6 – PC Conditionally Approved January 2008.

**BBOA-529 – Khoury Engineering, Inc.** – Request for Special Exception per Zoning Code Section 11-7D-2 Table 1 to allow a Use Unit 17 automotive repair and sales business use in the CS Commercial Shopping Center District for Lot 6 (included part of subject property) – BOA Approved 12/06/2010.

**BL-376 – Khoury Engineering, Inc. for Bixby Investors, LP** – Request for Lot-Split approval for Lot 6 (included part of subject property) – PC Conditionally Approved 12/20/2010.

**BBOA-535 – Khoury Engineering, Inc.** – Request for Variance from (1) the 150' minimum lot-width / minimum ground sign spacing standard of Zoning Code Section 11-9-21.C.[8].a, (2) from the maximum display surface area restrictions of Zoning Code Section 11-9-21.D.3, and (3) any other Zoning Code restriction preventing the erection of two (2) freestanding ground signs at three (3) square feet in display area [each], all for Lot 6 (included part of subject property) – BOA Approved 01/03/2011.

**BBOA-536 – Khoury Engineering, Inc.** – Request for Variance from the 150' minimum lot-width / minimum ground sign spacing standard of Zoning Code Section 11-9-21.C.[8].a for the North 154.5' of Lot 6, and the South 46.08' of Lot 5, Block 1, Bixby Centennial Plaza (included part of subject property) – BOA Approved 02/07/2011.

**AC-11-02-01 – Firestone Complete Auto Care – Khoury Engineering, Inc.** – Request for Detailed Site Plan approval for a Use Unit 17 automotive repair and sales business for the S. 165.5' of Lot 6, Block 1, Bixby Centennial Plaza (included part of subject property) – Withdrawn by Applicant prior to Planning Commission meeting 02/22/2011.

**BL-381 – Khoury Engineering, Inc. for Bixby Investors, LP** – Request for Lot-Split approval for Lot 6 part of subject property – Pending PC consideration 09/19/2011.

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

**BZ-182 – Eugene Green** – Request for rezoning from RS-1 to CG for Lots 1 and 2 of Block 5, North Heights Addition (the Jiffy Lube property at 11800 S. Memorial Dr.) for a car lot – Approved by City Council August 11, 1987 (Ord. # 569).

**BBOA-449 – Patrick Moore for SBM Corporation** – Request for Special Exception to authorize a Use Unit 17 Automotive and Allied Activities for a Jiffy Lube auto service facility at 11800 S. Memorial Dr. – Denied by Board of Adjustment 10/02/2006.

BZ-318 – SBM Corporation for Eugene & Norma Green – Request for rezoning from RS-1 to OL for Lot 3 Block 5, North Heights Addition (the Jiffy Lube property at 11800 S. Memorial Dr.) – PC Recommended Approval October 16, 2006 and City Council Approved November 13, 2006 (Ord. # 953).

PUD # 54 – Jiffy Lube – Request for PUD overlay zoning for the Jiffy Lube property at 11800 S. Memorial Dr. – PC Recommended Approval 03/19/2007 and City Council Approved 04/09/2007 (Ord. # 963).

BL-351 – Khoury Engineering, Inc. – Request for Lot-Split approval to separate the north 42’ of Lot 8 and add to Lot 7 of Bixby Centennial Plaza – PC Conditionally Approved 03/17/2008.

AC-08-06-05 – Santa Fe Cattle Co. – Request for Detailed Site Plan approval for a Use Unit 12 restaurant at 11982 S. Memorial Dr., the S. 264.00’ of Lot 8, Block 1, Bixby Centennial Plaza – Architectural Committee Conditionally Approved 06/16/2008.

AC-08-07-01 – IBC Bank – Request for Detailed Site Plan approval for a Use Unit 11 bank at 11886 S. Memorial Dr., The N. 158.42’ of Lot 5, Block 1, Bixby Centennial Plaza – Architectural Committee Conditionally Approved 07/21/2008.

AC-09-05-02 & AC-09-05-05 – IBC Bank – Request for approval for wall signs and a ground sign, respectively, for the IBC Bank at 11886 S. Memorial Dr., The N. 158.42’ of Lot 5, Block 1, Bixby Centennial Plaza – Architectural Committee Approved both on 05/18/2009.

**BACKGROUND INFORMATION:**

General. This application was Continued from the September 06, 2011 meeting due to the Applicant’s failure to attend the meeting to present the application.

Previous Plans for Firestone Development. BBOA-529, BBOA-535, BL-376, and AC-11-02-01 (December 2010 to February 2011) were all applications in support of a Use Unit 17 Firestone Complete Auto Care & Tire Store development, which was to occur on the S. 165.5’ of Lot 6, Block 1, Bixby Centennial Plaza. BBOA-536 was a request for the remaining land between the Firestone development and IBC Bank to have its own freestanding ground sign.

Ultimately, Firestone decided to cancel the project and did not buy the land or build the store.

A new business development is now proposed for the S. 216’ of Lot 6. BL-381 is a request for Lot-Split to separate that new development tract from the North 104’ balance of Lot 6, which will be added to the S. 46.08’ of Lot 5 to create another future development lot. The Planning Commission will consider this application on September 19, 2011. The business’ name has not yet been made public.

In accordance with the Bixby Zoning Code Section 11-4.3.B, in order to secure the approval of a Board of Adjustment application, within 90 days of the approval, the Decision of Record shall be filed of record with the County Clerk. For both BBOA-535 and BBOA-536, Staff provided the Decision of Record, signed by the Board of Adjustment Chair and attested to by Staff, to the Applicant, who provided it to the property owner for signature and recording. The documents were not signed or recorded within the 90-day approval window, and the approvals are thus now void.

Relation to BBOA-535 and BBOA-536. This application is essentially identical to the requests per BBOA-535 and BBOA-536, in that their combined effect was to approve the erection of three (3) freestanding ground signs at three (3) square feet in display area each on the subject property. BBOA-535 allowed the combined development entrance / shopping center sign within a sign easement at the southeast corner of Lot 6 and another freestanding ground sign on the southerly part of Lot 6, to advertise the Firestone business then planned. BBOA-536 allowed a freestanding ground sign on the future development lot between the IBC Bank on the north and the Firestone development then planned on the southern part of Lot 6. The Board of Adjustment approved BBOA-535 on January 03, 2011 and BBOA-536 on February 07, 2011.

Lot-Split / Lot-Combination Considerations. Per BL-350, Lot 5 to the north was approved for Lot-Split to separate the south 46.08’ from the balance of that lot, which was sold and developed with an IBC Bank. Per the Planning Commission’s Conditional Approval, because it would otherwise violate the 150’ minimum frontage requirement of the CS district, that 46.08’ “sliver tract” was required to be attached to Lot 6, Block 1, Bixby Centennial Plaza. Deed restriction language to that effect was used on the deed presented to Staff for the Lot-Split approval certificate stamp and signature. However, the Tulsa County Assessor’s parcel data does not reflect the attachment. This could be because the deed Staff stamped was not used, the Assessor’s Office did not recognize the deed restriction language as requiring changes to the parcel data, or did not recognize it as adequate for this purpose, such as because there was not reciprocal deed restriction specifically concerning a conveyance of Lot 6.

The deed restriction language provided that the Planning Commission could reverse the combination by future Lot-Split approval. Therefore, as a Condition of Approval for BL-381, Staff recommends the Planning Commission require that the deed for the northerly tract (North 104' balance of Lot 6) include a deed restriction correspondingly attaching that tract to the South 46.08' of Lot 5. That was a Condition of Approval of BL-376, but that lot-division plan supporting the then-planned Firestone development has since been abandoned.

ANALYSIS:

Subject Property Conditions. The subject property is vacant and zoned CS. It consists of Lot 6, and the S. 46.08' of Lot 5, Block 1, Bixby Centennial Plaza.

The subject property is located toward the center of the Memorial Dr. frontage of the Bixby Centennial Plaza subdivision, which contains 40 acres and is primarily zoned CS. To the west are larger vacant lots in Bixby Centennial Plaza and, further west is an unplatted 11-acre vacant/agricultural tract zoned CS/OL + PUD 51.

To the east is the (across Memorial Dr.) is a 9+ acre CS district containing the Town and Country Shopping Center, a large CG district containing the Bank of the West, a multi-tenant building at 11835 S. Memorial Dr. containing the Rod Smith Company real estate business and DTAGS, LLC (Digital Transport Agnostic Gateway Solutions) video services general business office, and the Advantage Motors of Oklahoma used car sales lot.

To the north is the IBC Bank bank branch zoned CS and the Use Unit 17 Jiffy Lube zoned CG/OL + PUD 54.

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 shopping center developer proposes three (3) ground signs for the subject property. Per the exhibit submitted with the application, they are:

- (1) One combined development entrance sign ("shopping center sign") to advertise the shopping center businesses behind the frontage lots. It would be located within the sign easement at the southeast corner of Lot 6. According to the exhibit attached to the "Declaration of Sign Easement" recorded February 22, 2008 at Document # 2008018401 in the records of the Tulsa County Clerk, it is a 10' X 20' sign easement, which has its southeastern-most corner located 33' north and 17.5' west of the southeast corner of Lot 6. The easement was recorded after filing the Final Plat of Bixby Centennial Plaza.
- (2) One ground sign to exclusively advertise the currently-proposed business on the S. 216' of Lot 6. The exhibit indicates it would be located 122' north of the shopping center sign.
- (3) One ground sign to exclusively advertise a future business on the N. 104' of Lot 6 and the S. 46.08' of Lot 5 (to be combined into a singular lot). The exhibit indicates it would be located 105.94' south of the existing IBC Bank sign and 105.94' north of the middle sign on the subject property.

It should be noted that the submitted exhibit was originally used for BBOA-536, does not reflect the currently-planned property lines per BL-381, and should not be interpreted as the planned absolute spacing and placement of future signs.

Zoning Code Section 11-9-21.C.8.a has a 150' minimum lot-width / minimum spacing standard between ground signs in the CS district. Not coincidentally, the Zoning Code also requires a minimum 150' lot width in the CS district. The two (2) 150' standards work together to ensure that there are not more than one (1) ground sign per 150', which helps to maintain the aesthetic quality of the City's commercial corridors, and also operates to ensure all businesses enjoy appropriate visibility, uncluttered by excessive signage from neighboring properties.

The Zoning Code currently does not have a provision exempting shopping center signs from the location and square footage limitations, and the development was not processed as a PUD. If it were not for this sign, both development lots would have adequate room for their own exclusive ground signs. However, because of it, the three (3) proposed signs would be prohibited by the strict application of the 150' standard, and would require a Variance.

In the CS district, ground signs are permitted, per Zoning Code Section 11-9-21.D.3, "two (2) square feet per each lineal foot of street frontage if only one such sign is erected, and shall not exceed one square foot per each lineal foot of street frontage if more than one sign is erected." In addition to the 150' separation standard, this display surface area standard also helps to maintain the aesthetic quality of the City's commercial corridors, and also operates to ensure all businesses enjoy appropriate visibility, uncluttered by excessive signage from neighboring properties.

As the southerly lot is proposed to have two (2) ground signs (presuming approval), it is limited to 216 square feet of display surface area (which could be, for example, 10' X 21.6'), to be divided between the two (2) signs. This would not allow the erection of both future signs (of reasonable size), as the shopping center sign itself could easily be anticipated to achieve those dimensions.

Therefore, for the second Variance component, the Applicant is requesting a Variance from the maximum display surface area restrictions of Zoning Code Section 11-9-21.D.3. As requested, the three (3) ground signs would each be allowed three (3) square feet in display surface area.

The third and final Variance component is intended to be a 'catch-all,' in the event other provisions of the Zoning Code would prevent the erection of three (3) freestanding ground signs each at three (3) square feet of display surface area, but were inadvertently overlooked when determining the number of and scope of Variances necessary.

All three (3) Variance requests are inextricably related with a common nexus: The proposal to erect three (3) freestanding ground signs on the subject property, each at three (3) square feet of display surface area. Further, the different Zoning Code regulations from which the Variance has been requested all operate to a singular effect: the prohibition of such signage. Therefore, this report will not divide the separate Variance components into different report sections.

Unnecessary Hardship. The Applicant claims that an Unnecessary Hardship would be caused by the literal enforcement of the Zoning Code because "The Bixby BOA has previously approved this request in BOA535 & BOA536. However, the decision of record was not filed at the County clerk's office within 90 days of approval."

The Applicant is making reference to BBOA-535 and BBOA-536. The arguments presented for this test and standard in those applications were,

"The City Code allows for one free-standing sign per 150-feet of lot frontage. The future shopping center sign easement will only benefit Lots 1, 2, and 3. Therefore, Lot 6 will not benefit from that sign." (BBOA-535)

"The existing IBC bank sign at the [southeast corner] of their lot caused the remainder of Lot 5 & 6 to not have the benefit of a freestanding sign." (BBOA-536)

These responses imply that there would be a hardship if the subject property owner, and future commercial businesses, were not allowed the shopping center sign (of reasonable size) and each development lot allowed its own exclusive ground sign (of reasonable size).

In addition to the one described above, there are two (2) other known sign easements recorded in Bixby Centennial Plaza since the plat was recorded: One on vacant Lot 1, Block 1 with 121<sup>st</sup> St. S. frontage, and one at the southeast corner of Lot 8, Block 1 (containing the Santa Fe Cattle Co. restaurant). None of the easements contain a shopping center sign, as none of the "back" lots have yet been developed with shopping center buildings. Based on aerial and GIS data, it would appear that the Lot 8, Block 1 sign easement should have adequate room to meet the 150' separation standard from the existing ground signs on Lot 8 (Santa Fe Cattle Co. restaurant) and Lot 9 (Bank of Oklahoma).

The 150' minimum lot-width / minimum spacing and the display surface area restriction standards amount to an effective prohibition of both the shopping center sign (of reasonable size) and an exclusive ground sign (of reasonable size) for each on the future development lots, which could be considered an Unnecessary Hardship, as one or another of the future businesses would not be permitted signage to advertise their businesses, as have most or all other surrounding businesses fronting on Memorial Dr., and so such business would be at a competitive disadvantage.

From the standpoint of the future business on the subject property, all other outparcel lots in Bixby Centennial Plaza have or may be expected to have an exclusive ground sign on their lots.

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, "The City approved both lot splits. We believe that without a freestanding sign allowed on the remainder lot 5 & 6, it will be difficult to attract a potential developer, since a potential business will require its own exclusive ground sign." This was the same argument used for BBOA-536.

*The subject property should be considered to have Peculiar, Extraordinary, and/or Exceptional Conditions or Circumstances by virtue of the following facts, considered together:*

- *The City of Bixby approved the plat of Bixby Centennial Plaza with six (6) 'outparcel' lots (and a small "handle" of Lot 3) fronting on Memorial Dr. This left an average of approximately 220 feet per lot, which would exceed the minimum 150' frontage requirement.*
- *The City of Bixby allowed for the creation of two (2) future development lots from the subject property per BL-350 and BL-376.*
- *Per BL-381, the southerly tract will have 216' of frontage and the northerly tract will have (46.08' + 104' =) 150.08' of frontage, each of which exceeds the minimum requirement for the same in the CS district, and would normally allow for the 150' separation standard to be met on each lot; however,*
- *A 10' X 20' part of the subject property's frontage was reserved as a sign easement for the combined development sign, and*
- *IBC Bank chose to install their ground sign at the southeast corner of that lot, and so*
- *These two (2) sign locations will not allow for the minimum 150' of separation to be achieved for all three (3) proposed ground signs, and*
- *The location of the sign easement was evidently determined based on the north half of the primary development entrance drive occupying the south side of the subject property within an 18' Mutual Access & Utility Easement, and*
- *If the Bixby Commons development was done as a PUD, exceptions to allow for shopping center signs and exclusive freestanding signs for each lot could have been properly planned and resolved in advance, and finally*
- *The subject property has already been granted approval for the requested Variance per BBOA-535 and BBOA-536.*

*These conditions, considered together, can be seen to have given rise to the subject property's unnecessary hardship. In other words, the subject property would normally be allowed to have two (2) freestanding ground signs (of reasonable size), but due to the Lot-Splits and the shopping center sign, the otherwise allowable signs on the subject property have been "squeezed out."*

*Finding of No Substantial Detriment or Impairment and Minimum Necessary. 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 requested separation between signs [seems] reasonable request, especially since these were previously approved by BOA. If this sign is approved, we will only have a total of 8 ground signs on Memorial."*

*As the Zoning Code was intentionally written to have the 150' minimum lot width in the CS district correspond with the 150' minimum ground sign separation standard, the Zoning Code intended to allow each business to have one (1) ground sign. The City of Bixby approved BL-350 and BL-376, which helped give rise to the conditions whereby at least one (1) ground sign would be prohibited. With the lot-combinations required as Conditions of Approval of BL-350 and BL-351, there will ultimately be no more than six (6) Memorial Dr. frontage lots for all of Bixby Centennial Plaza, save for the 66.75'-wide "handle" of the flag-lot, Lot 3 Block 1, which cannot have a ground sign due to the 150' separation standard and does not appear to have a sign easement.*

*Per AC-08-06-05, the Santa Fe Cattle Co.'s exclusive ground sign was spaced to meet the 150' separation standard from the shopping center sign to be located in the southeast corner of that lot in another sign easement.*

*Per AC-08-07-01, IBC Bank originally proposed two (2) ground signs on its lot, but this number was reduced to one (1) in conformity to the 150' spacing standard during the review of that Detailed Site Plan. The Applicant in that case selected a southeast corner location for that one (1) permitted sign.*

*Based on all of the above information, including the sign easements, it appears that, if the Variance is approved, there would be no more than eight (8) ground signs for all of the Memorial Dr. frontage of Bixby Centennial Plaza. This presumes that there is adequate room for meeting the 150' standard on the vacant lot [Lot 7 + N. 42' of Lot 8 (which must be combined per BL-351)] between Santa Fe Cattle Co. and the subject property, as indicated possible per the submitted exhibit. At approximately 1,321 feet of Memorial Dr. street frontage in Bixby Centennial Plaza, that means there would be a ratio of one (1) ground sign for each 165' (more or less).*

According to the submitted exhibit, there would be  $(122' + 105.94' + 105.94' =) 333.88'$  between the existing IBC Bank sign and the proposed shopping center sign. Three (3) signs would require that dimension be 450' to meet the ground sign separation standard. The Board should determine that a Variance of  $(450' - 333.88' =) 116.12'$  [or, alternatively, one (1) ground sign], and that three (3) square feet of display surface area per sign can be recognized as adequate for fulfilling the intent to maintain the aesthetic quality of Bixby's commercial corridors and ensuring all businesses enjoy appropriate visibility, uncluttered by excessive signage from neighboring properties. If it does, Staff believes that the spirit and intent of the 150' standard would not be compromised, and that the 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, and that the Variance would be the Minimum Necessary to alleviate the unnecessary hardship.

Potential Precedents. Staff notes that the same or substantially similar arguments were advanced in the cases of BBOA-479 – Ben Holliday (Chick-fil-a), approved by the Board of Adjustment on July 07, 2008 and BBOA-504 – John Bass for TWB Enterprises, LLC d.b.a. Zudz Car Wash, approved by the Board of Adjustment July 06, 2009. Both previous cases were similar, except that in those cases the properties were both originally platted with less than 150' of street frontage on Memorial Dr.

As stated in the Background Information section of this report, this application is essentially the same as the combination of BBOA-535 and BBOA-536. It should be recognized that substantially similar arguments were presented in that case as in this one, and were found adequate for approving a Variance in both cases.

The Board should consider these cases for precedent implications for the current application.

Staff Recommendation. If the Board agrees with Staff that the arguments presented in the application and the analysis above substantially meet most of the Variance tests and standards provided in State Statutes and the Bixby Zoning Code for the Variance, Staff recommends Approval.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Malek Elkhoury of PO Box 52231, Tulsa, OK [74152] was present and described the proposed Lot-Split [per BL-381].

Chair Jeff Wilson asked Malek Elkhoury to show the Board the lot line and sign location using the site plan. Mr. Elkhoury approached the Board members and reviewed with them the site plan. Mr. Elkhoury stated that there would be 105' of separation between signs.

Erik Enyart asked Malek Elkhoury if the name of the currently-proposed business was yet made public knowledge. Mr. Elkhoury stated that it would be a Communications [Federal] Credit Union, and that, as soon as the Lot-Split was approved, the [credit union] would close [on the property].

No one else was present to speak on the item.

There being no further discussion, Chair Jeff Wilson made a MOTION to APPROVE BBOA-544, as all the reasons stated in the Staff Report clearly show, based on the Lot-Split, the Variance meets all the requirements. 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

ADJOURNMENT

Chair Jeff Wilson asked to entertain a Motion to Adjourn. Murray King made a MOTION to ADJOURN. Larry Whiteley 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 6:50 PM.

APPROVED BY:

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

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