

**MINUTES
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 W. NEEDLES AVE.
BIXBY, OK 74008
November 07, 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 Vice-Chair Murray King at 6:04 PM.

ROLL CALL

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

Members Absent: Jeff Wilson.

MINUTES

1. Approval of Minutes for October 03, 2011

Vice-Chair Murray King introduced the item and asked to entertain a Motion. Larry Whiteley made a MOTION to APPROVE the Minutes of October 03, 2011 as presented by Staff. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Mullins, Whiteley, Hill, & King

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 4:0:0

NEW BUSINESS

3. **BBOA-547 – Kimley-Horn & Associates, Inc.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-10-2.H to allow a total of 40 parking spaces, in excess of the 24 space maximum standard for a proposed restaurant in the CG General Commercial District and CS Commercial Shopping Center District with PUD 65.

Property located: Part of Lot 3, Block 1, *101 Memorial Square*; 10121 S. Memorial Dr.

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

To: Bixby Board of Adjustment
From: Erik Enyart, AICP, City Planner
Date: Wednesday, October 26, 2011
RE: Report and Recommendations for:
BBOA-547 – Kimley-Horn & Associates, Inc.

LOCATION: – [Part of] Lot 3, Block 1, 101 Memorial Square
– 10121 S. Memorial Dr.
LOT SIZE: – 1.58 acres, more or less (Lot 3 subject property parent tract)
– 1.21 acres, more or less (concerned part of Lot 3; cf. BL-382)
ZONING: CG General Commercial District and CS Commercial Shopping Center District with PUD 65 for 101 Memorial Square
REQUEST: Special Exception per Zoning Code Section 11-10-2.H to allow a total of 40 parking spaces, in excess of the 24 space maximum standard for a proposed restaurant in the CG General Commercial District and CS Commercial Shopping Center District with PUD 65.

SURROUNDING ZONING AND LAND USE:

North: CS/PUD 65; Vacant commercial lots and CVS/Pharmacy in 101 Memorial Square.
South: CG/CS/PUD 63; 102nd St. S. (private), the Schlotzsky's Deli restaurant and vacant commercial land in 101 South Memorial Plaza.
East: CS & CS/PUD 63; Vacant commercial lots and the Holiday Inn Express & Suites Tulsa South/Bixby in 101 South Memorial Plaza.
West: (across Memorial Dr.) CS & AG; Commercial in the Memorial Crossing shopping center, a Blockbuster video rental store, and vacant land zoned AG, all in the City of Tulsa.

COMPREHENSIVE PLAN: Corridor + Medium Intensity + Commercial Area.

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

BZ-89 – Ron Koepf – Request for rezoning from AG to CG for 3.6 acres including the southerly 0.96 acres (more or less) of the subject property – Recommended for Approval by PC 04/28/1980 and Approved by City Council 05/19/1980 (Ord. 401).

BZ-148 – John Moody for William E. Manley, et al. – Request for rezoning from AG to CG (amended to CS) for the area which was eventually platted as 101 Memorial Square, including subject property, less the southerly 0.96 acres (more or less) thereof – Recommended for Approval by PC 10/31/1983 and Approved by City Council 11/07/1983 (Ord. 496).

BBOA-341 – Roy D. Johnsen for William E. Manley – Request for Special Exception to allow used car sales on the northwest 0.7 acres of the area which was eventually platted as 101 Memorial Square – Denied by BOA 11/02/1998 – Notice of Appeal in District Court found in case file but with no followup information as to its ultimate disposition.

BBOA-409 – Eric Sack for William & Betty Manley – Request for Variance to Chapter 11, Section 1140(d) “Unenclosed off-street parking areas shall be surfaced with an all-weather material,” and a Special Exception per Chapter 10 Section 1002.3(a) “Temporary open air activities, may continue for a period not to exceed thirty days per each application.... for the sale of Christmas Trees, wreaths, bows and other seasonal goods from November 25, 2003 through December 24, 2003 for area which was eventually platted as 101 Memorial Square, including subject property – Withdrawn by Applicant in September 2003.

BBOA-410 – Eric Sack for William & Betty Manley – Request for Variance to Chapter 11, Section 1140(d) “Unenclosed off-street parking areas shall be surfaced with an all-weather material,” and a Special Exception per Chapter 10 Section 1002.3(a) “Temporary open air activities, may continue for a period not to exceed thirty days per each application.... for the sale of Halloween related items such as pumpkins, gourds, hay and other seasonal goods and related activities such as pony rides and miniature train rides, from September 26, 2003 through October 31, 2003 for the area which

was eventually platted as 101 Memorial Square, including subject property – Withdrawn by Applicant in September 2003.

PUD 65 – 101 Memorial Square – Manley 101st & Memorial, LLC – Request for PUD approval for area which was eventually platted as 101 Memorial Square, including subject property – Recommended for Conditional Approval by PC 11/17/2008 and Conditionally Approved by City Council 01/05/2009.

Preliminary Plat of 101 Memorial Square – Manley 101st & Memorial, LLC – Request for Preliminary Plat approval for area which was eventually platted as 101 Memorial Square, including subject property – Recommended for Conditional Approval by PC 11/17/2008 and Conditionally Approved by City Council 11/24/2008.

Final Plat of 101 Memorial Square – Request for Final Plat approval for area which was eventually platted as 101 Memorial Square, including subject property – Recommended for Conditional Approval by PC 02/17/2009 and Conditionally Approved by City Council 03/02/2009.

AC-09-02-02 – CVS/Pharmacy – Jacobs Carter Burgess – Request for Detailed Site Plan approval for Lot 1, Block 1, 101 Memorial Square – Architectural Committee Conditionally Approved 02/17/2009. Applicant Appealed the Approval in order to do away with the landscaped berm and Council took no action on 03/09/2009 based on the City Attorney’s opinion that the Council had removed the berm requirement for this Detailed Site Plan upon the approval of the Final Plat of 101 Memorial Square.

BSP 2009-01 – CVS/Pharmacy – Jacobs Carter Burgess – Request for Detailed Site Plan approval for Lot 1, Block 1, 101 Memorial Square as required by PUD 65 – PC Conditionally Approved 02/17/2009. Applicant Appealed the Approval in order to do away with the landscaped berm and Council took no action on 03/09/2009 based on the City Attorney’s opinion that the Council had removed the berm requirement for this Detailed Site Plan upon the approval of the Final Plat of 101 Memorial Square.

BL-382 – Sisemore, Weisz & Associates, Inc. – Request for Lot-Split approval for Lot 3 subject property – Pending PC consideration 11/21/2011.

AC-11-11-02 – Whataburger – Kimley-Horn & Associates, Inc. – Request for Detailed Site Plan approval for concerned part of Lot 3 subject property (cf. BL-382) – Pending PC consideration 11/21/2011.

RELEVANT AREA CASE HISTORY:

BACKGROUND INFORMATION:

ANALYSIS:

Property Conditions. The subject property, Lot 3, Block 1, 101 Memorial Square, is moderately sloped and primarily drains to the southeast to an upstream tributary of Fry Creek. The property is presently vacant. It is bordered on the north by vacant Lot 2, Block 1, 101 Memorial Square, on the west by Memorial Dr., on the south by 102nd St. S., a private commercial street, and on the east vacant commercial lots in 101 Memorial Center and 101 South Memorial Plaza.

General. The subject property is proposed to be developed with a Whataburger fast-food restaurant. The development plans call for a total of 40 parking spaces. The Zoning Code provides a minimum number of parking spaces standard, and in addition, Zoning Code Section 11-10-2.H provides a maximum parking number standard, to discourage developers from selecting properties which are too small to contain their buildings and all of the parking they anticipate need for. The maximum number of parking spaces allowed for this property, per building size represented on the Site Plan, is 24 parking spaces (reference Zoning Code Section 11-9-12.D), and a total of 40 parking spaces are proposed. In other words, the site is proposed to have a total of 92.5% more parking spaces than the minimum required.

Comprehensive Plan. The Comprehensive Plan designates the subject property as Corridor + Medium Intensity + Commercial Area.

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.

Surrounding Zoning and Land Use Compatibility. Upon reviewing the Detailed Site Plan per AC-11-11-02, it appears that the number of parking spaces proposed is consistent with the relative number proposed for similar restaurant uses.

Per Aerial data and GIS, the Schlotzsky's Deli restaurant just to the south has approximately 3,440 square feet and 43 parking spaces. At 3,440 square feet, 23 parking spaces would be required, so the 43 parking spaces are 87% higher than the minimum number required.

Per Aerial data and GIS, further to the south, the Carl's Jr. restaurant has approximately 4,125 square feet and the Taco Bueno about 3,000 square feet, and they share approximately 96 parking spaces (48 required, or 102% higher than the minimum number required).

The average of 87% and 102% is 94%, and this application proposes only 92.5% more parking spaces than the minimum number required.

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.

One of the Board members asked why there was a maximum parking number standard, noting that he was more accustomed to seeing applications pertaining to the minimum parking number requirements. Erik Enyart stated that, in December of 2009, the City Council approved an ordinance amending the Zoning Code which did many things, one of which was institute a maximum parking number standard, at 15% over the minimum standard. Mr. Enyart stated that this particular change precipitated from the case of *LifeChurch*, which involved a small parcel of land that the church originally planned to almost completely cover with paving and building. Mr. Enyart stated that the thought process at the time was to discourage people from selecting lots which were too small, and the consequent need to pave over the whole lot. Dave Hill indicated that churches should be allowed to have adequate parking.

Larry Whiteley expressed concern that the lot would be built in a manner preventing people from driving between lots, and requiring they exit the lot onto the street to go to the business next door. Erik Enyart stated that he had worked with the design engineer at the time of PUD and plat approval to ensure there would be cross-access between all lots in *101 Memorial Square*. Mr. Enyart stated that, in fact, there was already a drive connecting this lot to CVS. Mr. Enyart stated that the plat created a Mutual Access Easement ensuring cross-access to all lots in the development.

Vice-Chair Murray King asked if the Applicant was present and wished to speak on the item. Applicant Lance Oriti of *Kimley-Horn & Associates, Inc.* was present and noted that Rick Mill with *Whataburger* was also present. Mr. Oriti stated that he had nothing to add to what Erik Enyart had said.

There being no further discussion, Darrell Mullins made a MOTION to APPROVE BBOA-547. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

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

2. Approval of schedule of meetings and application cutoff dates for 2012

Vice-Chair Murray King introduced the item and asked to entertain a Motion. Erik Enyart clarified with one of the Board members that the September meeting would be on a Tuesday in order to avoid the Labor Day holiday. Dave Hill made a MOTION to APPROVE the schedule as presented by Staff. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

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

ADJOURNMENT

Vice-Chair Murray King asked to entertain a Motion to Adjourn. Larry Whiteley made a MOTION to ADJOURN. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

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

Meeting adjourned at 6:13 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary