

AGENDA
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 WEST NEEDLES
BIXBY, OK 74008
April 23, 2013 6:00 PM

SPECIAL MEETING

CALL TO ORDER

MINUTES

- (2) 1. Approval of Minutes for April 01, 2013

OLD BUSINESS

NEW BUSINESS

- (25) 2. **BBOA-577 – Khalid Bakri.** Discussion and possible action to approve a variance from the Bixby Floodplain Regulations, in accordance with the Flood Damage Prevention provisions of City Code Section 13-2B-12, to allow for the construction of a horse stable (barn) building structure with the dirt floor located below the Base Flood Elevation (BFE) of the 100-year (1% Annual Chance) Regulatory Floodplain.
Property located: Part of the S/2 NE/4 SE/4 Section 01, T17N, R1EE; 12808 S. Mingo Rd.

- (54) 3. **BBOA-578 – Daniel & Leanne Martin.** Discussion and possible action to approve (1) A Variance from the minimum public street frontage standard of Zoning Code Section 11-8-4, and (2) a Variance from certain other bulk and area standards of the AG Zoning District as per Zoning Code Section 11-7A-4 Table 3, all to allow for the construction of a building addition to an existing house on an existing lot of record in the AG Agricultural District.
Property located: Part of the W/2 NE/4 of Section 06, T17N, R14E; 12305 S. 109th E. Ave.

ADJOURNMENT

Posted By: Enyart

Date: 04/25/2013

Time: 2:45 PM

**MINUTES
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 W. NEEDLES AVE.
BIXBY, OK 74008
April 01, 2013 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: Jeff Wilson, Dave Hill, Murray King, and Darrell Mullins.

Members Absent: Larry Whiteley.

MINUTES

1. Approval of Minutes for March 04, 2013

Chair Jeff Wilson made a MOTION to APPROVE the Minutes of March 04, 2013 as presented by Staff. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: King, Wilson, Mullins, & Hill

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 4:0:0

OLD BUSINESS

Chair Jeff Wilson asked if there was any Old Business to consider. Erik Enyart stated that he had none. No action taken.

NEW BUSINESS

2. **BBOA-572 – Spencer Thompson.** Discussion and possible action to approve a Variance from the accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to

allow a new 30' X 50' (1,500) square foot accessory building in the rear yard for property in the RS-1 Residential Single-Family District.

Property located: The W/2 E/2 NE/4 NE/4 NW/4 NE/4 of Section 11, T17N, R13E; 7702 E. 131st 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, March 27, 2013
RE: Report and Recommendations for:
BBOA-572 – Spencer Thompson

LOCATION: – The W/2 E/2 NE/4 NE/4 NW/4 NE/4 of Section 11, T17N, R13E
– 7702 E. 131st St. S.

LOT SIZE: 0.625 acres, more or less

ZONING: RS-1 Residential Single-Family District

REQUEST: Variance from the accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new 30' X 50' (1,500) square foot accessory building in the rear yard for property in the RS-1 Residential Single-Family District

SURROUNDING ZONING AND LAND USE: RS-1, RS-4, AG, & IL; Rural residential along 131st St. S. in unplatted tracts and in Poe Acreage to the north and Clyde Miller Acreage to the northeast, with RS-4 and urban density single family residential to the southeast in Abbie Raelyn Estates, and agricultural and vacant land to the south/southwest zoned RS-1, AG, and IL

COMPREHENSIVE PLAN: Low Intensity + Residential Area

PREVIOUS/RELATED CASES: (not a complete list)

BL-34 – Stella Harness – Request for Lot-Split approval separating subject property from its former eastern half addressed 7706 E. 131st St. S. – PC Recommended Approval 09/26/1977 subject to Board of Adjustment approval.

BBOA-41 – Stella Harness – Request for Variance from the Lot-Width requirement in the RS-1 district to allow for Lot-Split (cf. BL-34) – BOA Approved 01/10/1978.

RELEVANT AREA CASE HISTORY: (not a complete list)

BBOA-243 – John Little – Request for Variance of 600 square foot maximum floor area for detached accessory building in the RS-1 district to permit an additional 1,000 square feet for formerly 2.5-acre tract abutting to the west addressed 7516, 7710, & 7704 E. 131st St. S. – BOA Approved 08/05/1991 per case notes.

BBOA-366 – John Neerman – Request for Variance of 750 square foot maximum floor area for detached accessory building in the RMH district to permit a 36' X 45' (1,620 square foot) accessory building for property located to the northwest of subject property, Lot 3, Block 4, La Casa Movil Estates, addressed 12921 S. 73rd E. Ave. – BOA Approved 04/02/2001 on the Condition that no commercial use be permitted.

BBOA-398 – William & Sherri Nichols – Request for Variance of 750 square foot maximum floor area for detached accessory building in the RS-1 district to permit a 35.3' X 50.3' (1,775.59 square foot) accessory building for property located 1 block to the northw of subject property, Lot 6, Block 2, Poe Acreage, addressed 7712 E. 130th St. S. – BOA Approved 02/03/2003.

BACKGROUND INFORMATION:

ANALYSIS:

Subject Property Conditions. The subject property is an unplatted tract of approximately 0.625 acres, addressed 8703 E. 124th St. S., and Zoned RS-1. Per the provided Mortgage Inspection Report survey drawing dated 9/15/11, it contains an existing house and two (2) accessory buildings of approximately

625 square feet and 80 square feet (705 square feet in aggregate). It is not clear, however, from current aerial photography whether the smaller storage building remains on the property.

According to a 10/2001 photograph in the Tulsa County Assessor's records for this property, behind/to the south of the second, smaller accessory building used to be a third, red accessory building, which appeared to be of a size somewhat between the smaller and larger accessory buildings.

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 Applicant is requesting a Variance from the accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new 30' X 50' (1,500 square foot) accessory storage building for property in the RS-1 Residential Single Family District. As noted above, the property presently contains two (2) accessory buildings of approximately 625 square feet and 80 square feet (705 square feet in aggregate). Thus, the third building would bring the aggregate to approximately 2,205 square feet. It is not clear, however, from current aerial photography whether the smaller storage building remains on the property.

Zoning Code Section 11-8-8.B.5 provides:

"5. In the RE and RS districts, detached accessory buildings may be located in a rear yard, provided the accessory building(s) in the aggregate do not cover more than twenty percent (20%) of the area of the rear yard or exceed eight hundred (800) square feet of floor area, whichever is less.

No accessory building shall exceed the height of the primary dwelling on the lot.

In the RE and RS districts, lots containing at least one acre of lot area shall be permitted to exceed the eight hundred (800) square foot floor area limitation by 11.6 percent. Further, lots containing 1.25 acres or more of lot area shall be permitted to exceed eight hundred (800) square feet by an additional 11.6 percent for each one-fourth ($\frac{1}{4}$) of an acre over one acre, provided that in no case shall accessory building(s) in the aggregate exceed the square footage of the first floor of the primary dwelling or two thousand four hundred (2,400) square feet, whichever is less, or cover more than twenty percent (20%) of the area of the rear yard. (Ord. 2031, 12-21-2009)"

As the subject property is in the RS-1 residential zoning district and contains approximately 0.625 acres, the maximum allowable detached accessory building size is 800 square feet.

The "sliding scale" was introduced as a measure of flexibility, along with an increase in the basic maximum square footage from 750 square feet to 800 square feet, by Ordinance # 2031, approved December 21, 2009. It was designed to allow people to have larger accessory buildings, if they had enough land so that the accessory building did not dominate the parcel aesthetically and so detract from the neighborhood. The "sliding scale" was calculated in order to start at 800 square feet and increase regularly for each $\frac{1}{4}$ acre increment to the maximum of 2,400 square feet, which requires a lot containing slightly more than 3.25 acres.

This is the fifth application for Variance which has been received since the added flexibility was created, and it is requesting a Variance to exceed even the new flexibility. The first was BBOA-550 – Mitch & Gail Pilgrim, which the Board approved 12/05/2011 for that property located in Bixhoma Lake Estates. The second was BBOA-558 – John Ryel, which the Board approved 05/07/2012 for that property located in the Houser Addition. On August 06, 2012, the Board of Adjustment denied an application to build a 5,000 square foot addition to an existing 900 square foot accessory building for an unplatted 1-acre tract at 14426 S. Harvard Ave. (BBOA-565 – Robert Campbell III & Karen M. Campbell). Most recently, on October 01, 2012, the Board approved BBOA-568 – Roger O. Nunley, Jr.,

allowing allow a new 960 square foot addition to an existing 2,000 square foot accessory structure for property in the RS-1 District at 8703 E. 124th St. S. in Southern Memorial Acres No. 2.

Unnecessary Hardship. The Applicant claims that an Unnecessary Hardship would be caused by the literal enforcement of the Zoning Code because "Needed storage for personal vehicles (storage building)." Elsewhere on the application form, the Applicant has further explained the need thus, "Storage building (30' X 50') to house all vehicles that [are] currently sitting outside. Vehicles needing to be housed ..boat, (2) 4x4 off road jeeps and lawn mowers (rider and push) and etc. Building is in accordance with similar building already existing. Please see attached pictures."

The argument appears to be that the failure to be granted Variance would deprive the owner of the right to exceed the aggregate maximum floor area for an accessory building, and as a result, lack of proper shelter for (some amount of) relatively expensive personal property. Staff does not dispute that this claim is true, and may amount to an Unnecessary Hardship.

Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. The Applicant responded to the question asking how the subject property and its Condition or Situation is Peculiar, Extraordinary, and/or Exceptional by stating, "This is in accordance with other property owners existing building[s]."

The implied claim appears to point to other properties in the area which have accessory building(s) which, as individual buildings or in aggregate with others, exceed the maximum aggregate floor area allowance on their respective lots.

Staff believes that the following facts may be considered additional arguments in support of this test and standard:

1. The subject property had three (3) storage buildings as of 10/2001, and may now only have one (1) or two (2).
2. The subject property is relatively large, and is less than 4/10 of an acre short of qualifying for a somewhat larger (892.8 square feet) accessory building aggregate maximum.
3. The subject property is exceptionally deep in relation to its lot width, and the proposed replacement accessory building would be located within the deep back yard. Subdivision Regulations Section 12-3-4.F prohibits new lots from exceeding a depth to width ratio of 2:1. At a lot depth to width ratio of 4 to 1, the subject property is relatively rare and somewhat unique.
4. The proposed replacement accessory building would be located in an area which is adjacent to the rear yards of two (2) other properties which also have deep rear yards.

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 "Existing properties surrounding mine [have] similar buildings [as] I wish to build and [they] did not affect mine or has caused any adverse property de-valuation or any safety hazards."

The Applicant's underlying argument appears to be that the aesthetic effect would not be as pronounced in this case due to the presence of other properties in the area with evidently excessively large accessory buildings.

The Applicant has provided a photograph of an accessory building on the property "next door," which would appear to be the one to the west as the one to the east does not appear to have an accessory building. Per GIS and aerial data, the property to the west appears to have three (3) or four (4) accessory buildings, perhaps at or approaching 2,500 square feet in aggregate. It was approved for Variance for "an additional 1,000 square feet" per BBOA-243 – John Little on 08/05/1991.

In addition to the one mentioned just above, the Applicant provided three (3) other photographs of what appear to be excessively large accessory buildings on properties in the area. Also, in addition to the Variance case mentioned just above, the area case history documents two (2) other Variances for excessively large accessory buildings in the area. Beyond these, there appear to be several other detached accessory buildings in Poe Acreage, Clyde Miller Acreage, and unplatted areas along 131st St. S. which, by a cursory investigation, appear to exceed the current 800, and former 600 and 750 square foot maximum standards for the same. Thus, it would appear that some of the apparently excessively large accessory buildings in the area were constructed absent Variances.

Although the presence of other area properties with oversized accessory buildings would appear to support the Applicant's cause, nonconformities are generally not recognized as adequate for justification of the creation of new nonconformities by Variance.

Of the several fundamental purposes for imposing maximum accessory building size and rear yard placement restrictions, Staff believes the primary reason is for the sake of consistency of design, proportionality, and mode of placement of structures (aesthetics). Recognizing that the subject property previously had one (1) or two (2) other accessory buildings of somewhat less aggregate size for some time, evidently without protest from surrounding property owners, and that the replacement building will be located in the rear yard of a large, deep lot, in an area adjoining the rear yards of other deep-yard lots, Staff believes that the primary purpose is not as critical a concern in this instance. Building on the facts presented in this paragraph, it would appear that the proposed replacement accessory building would not "dominate the parcel aesthetically." See the arguments listed under the Peculiar, Extraordinary, or Exceptional Conditions or Circumstances test and standard for details on how those arguments can apply to this test and standard.

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. The Applicant claims that the requested Variance would be the Minimum Necessary to Alleviate the Unnecessary Hardship because "Amount required is what is needed to house lawn mowers, off road vehicles and etc."

The provided argument is self-explanatory.

Recognizing the intent behind the "sliding scale" flexibility provision, Staff believes it should be somewhat more difficult to justify this test and standard. If the Board is amenable to this application, it must find that the proposed aggregate 2,205 square feet of accessory buildings, 2.8 times the 800 square foot maximum, is the Minimum Necessary to Alleviate the Unnecessary Hardship.

Staff Recommendation. Except as noted otherwise hereinabove, Staff believes that the arguments provided by the Applicant and Staff appear to substantially meet some of the tests and standards of the Zoning Code and State Statutes. To the extent the arguments are found lacking, the Board may wish to consider other arguments that the Applicant and Board may discover during public hearing and consideration of this case at the meeting.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Spencer Thompson of 7702 E. 131st St. S. stated that it would be a wood frame structure for storage. Mr. Thompsons stated that he would store classic cars and other things he had that required storage.

A man who did not give his name stated that [Spencer Thompson] had cleaned up and improved the property. Chair Jeff Wilson asked the gentleman to introduce himself. Joe Thompson of 7702 E. 131st St. S. stated that he was Spencer's father. Mr. Thompson stated that his son had purchased the property about a year and a half ago, and took an estimated \$78,000 property and improved it. Mr. Thompson stated that a reappraisal lately valued the property at \$144,000. Mr. Thompson stated that his son had cleaned up the property.

Chair Jeff Wilson asked how many [storage] buildings were on the property now, and Joe Thompson and Spencer Thompson stated that there was only one (1) now.

Spencer Thompson stated that the existing storage building was 30' X 30', and was in poor condition. Mr. Thompson stated that his neighbor to the west had three (3) storage buildings, and the owner said she would send a letter supporting his application. Erik Enyart stated that that neighbor's letter was on page 24 of the agenda packet.

Erik Enyart stated that, in this case, the Variance would be "somewhat less" than the Variance might otherwise be, as there were, according to the Tulsa County Assessor's records, three (3)

storage buildings at one point, and now there was only one (1). Mr. Enyart stated that it could be seen as “reclaiming square footage that used to be on the lot.”

Murray King asked how much of a Variance was being requested. Erik Enyart consulted the Staff Report and stated that the total now proposed was 2,205 square feet per his calculations, which was 2.8 times the 800 square foot maximum permitted, and so a Variance of 2.8 times was being requested.

Chair Jeff Wilson stated that the lot was uniquely configured, as it was a long/deep lot, with surrounding properties that made it somewhat unique.

Darrell Mullins asked if the proposed building would be similar to the photos the Applicant had provided. Spencer Thompson responded that it would look “like this one next door,” and pointed to the photograph on page 20 of the agenda packet.

Chair Jeff Wilson asked to entertain a Motion. Murray King made a MOTION to APPROVE BBOA-572. Darrell Mullins SECONDED the Motion. Roll was called:

ROLL CALL:

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

Erik Enyart explained the Decision of Record process to Spencer Thompson.

- BBOA-573 – Bixby Public Schools.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-7A-2 Table 1 to allow a Use Unit 5 Community Center and/or a Use Unit 5 public school facility in an AG Agricultural District.
Property located: Part of the W/2 W/2 NE/4 of Section 24, T17N, R13E; 23 N. Riverview Rd.

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, March 27, 2013
RE: Report and Recommendations for:
BBOA-573 – Bixby Public Schools*

LOCATION: – Part of the W/2 W/2 NE/4 of Section 24, T17N, R13E
– 23 N. Riverview Rd.
LOT SIZE: 4 acres, more or less
ZONING: AG Agricultural District
REQUEST: Special Exception per Zoning Code Section 11-7A-2 Table 1 to allow a Use Unit 5 Community Center and/or a Use Unit 5 public school facility in an AG Agricultural District

SURROUNDING ZONING AND LAND USE:

North: AG; Agricultural.

South: AG; The Bixby Public Schools' landholding and school facilities located between Riverview Rd. and Mingo Rd.

East: AG; The Bixby Public Schools' landholding and school facilities located between Riverview Rd. and Mingo Rd.

West: RS-3; Residential and vacant lots in the Midland Addition and the [Original Town off] Bixby.

COMPREHENSIVE PLAN: (1) Low Intensity/Development Sensitive, (2) Vacant, Agricultural, Rural Residences, and Open Land, and (3) Community Trails.

PREVIOUS/RELATED CASES: None found.

RELEVANT AREA CASE HISTORY: (not a complete list)

BZ-172 – James H. Powell – request for rezoning approximately 20 acres of the school property abutting to the south at approximately 15600 S. Mingo Rd.; appears to be the bus barn area and the north side of the running track) from AG to RMH for a mobile home park (evidently never built) – City Council Approved 06/10/1986 (Ord. # 539)

BBOA-198 – Bixby Public Schools – request for Variance from the 26' height restriction to allow up to 30' in height, to permit an addition to an existing school for the formerly 8-acre school property tract to the south at 501/515 S. Riverview Rd. – BOA Approved 01/11/1988 per case notes.

BBOA-234 – Bixby Public Schools – request for Special Exception to allow a bus barn in an RMH district on approximately 20 acres of the school property abutting to the south at approximately 15600 S. Mingo Rd. – Approved December 1990 per case notes.

BBOA-282 – Bixby Public Schools – request for Special Exception to allow a Use Unit 5 school on part of the SW/4 SE/4 of the section (appears to include all of the school-owned tracts in the SW/4 SE/4 lying south of Bixby Creek) to the south of subject property – BOA Approved 08/01/1994.

BBOA-299 – Carolyn Wagnon – request for (1) a Special Exception to permit Use Unit 15 in a CS district, and (2) a Variance of certain bulk and area requirements in the AG district to permit a Lot-Split for property located to the south of subject property at 711 S. Riverview Rd. – BOA Approved 06/05/1995.

BL-192 – Wagnon Construction – request for Lot-Split for an approximately 0.8-acre tract to the south of subject property located just south of 711 S. Riverview Rd. – PC Approved in 06/19/1995.

BZ-213 – Carolyn Wagnon – request for rezoning from AG to CS for an approximately 0.8-acre tract to the south of subject property located just south of 711 S. Riverview Rd. – City Council Approved 07/24/1995 (Ord. # 720).

BZ-224 – Carolyn Wagnon – request to rezone about 1 acre from AG to CG at about 707 S. Riverview Rd. – Withdrawn in 1996.

BBOA-321 – Carolyn Wagnon – request for Special Exception to allow Use Unit 23 in the CS district at about 707 S. Riverview Rd. – Withdrawn in 1996.

BBOA-338 – James H. Powell – request for Variance to allow a Use Unit 9 mobile home on a former approximately 1.15-acre tract of the school property abutting to the south at the approximately 15700-block of S. Mingo Rd. – Denied 08/03/1998.

BBOA-339 – Bixby Public Schools – request for Special Exception to allow the expansion of the existing Use Unit 5 Bixby Central Elementary school building in the RS-3 district for all of Blocks 9 and 16, [Original Town off] Bixby, located two (2) blocks to the southwest of subject property at 201 S. Main St. – BOA Approved 08/03/1998.

BBOA-340 – Bixby Public Schools – request for Special Exception for a Use Unit 5 school on approximately the west half of the Bixby Middle School property to the south of subject property at 9401 E. 161st St. S. – BOA Approved 08/03/1998.

BZ-245 – James H. Powell – Request for rezoning of an approximately 1.15-acre tract of the school property abutting to the south at the approximately 15700-block of S. Mingo Rd. from AG to RMH for a mobile home site – Approved in November, 1998 (Ord. # 783).

Plat Waiver for Bixby Public Schools – Request for Waiver of the platting requirement per Zoning Code Section 11-8-13 for 32 acres of the school property abutting to the south – Approved by City Council 03/08/2010 after accepting right-of-way and U/E dedications at the same meeting.

BBOA-519 – JR Donelson for Bixby Public Schools – request for Special Exception per Zoning Code Section 11-7A-2 Table 1 to allow a Use Unit 5 school facility in an AG Agricultural District on 32 acres of the school property abutting to the south – BOA Approved 04/05/2010.

BLPAC-6 – JR Donelson, Inc. for Bixby Public Schools – request for approval of a Landscaping Plan Alternative Compliance plan for 32 acres of the school property abutting to the south per Zoning Code Section 11-12-4.D for a Vocational-Agriculture building for Bixby Public Schools – PC Conditionally Approved 04/19/2010.

BZ-348 – JR Donelson, Inc. for Bixby Public Schools – request for rezoning part of a former 32-acre school property tract to the south from RMH to AG for school land use and development purposes – PC recommended Approval 04/19/2010 and City Council Approved 05/10/2010 (Ord. # 2037).

BBOA-521 – JR Donelson for Bixby Public Schools – request for Special Exception per Zoning Code Section 11-7A-2 Table 1 to allow a Use Unit 5 school facility in an AG Agricultural District on the former 72-acre school property tract abutting to the south – BOA Approved 06/07/2010.

BLPAC-8 – Alaback Design Associates, Inc. for Bixby Public Schools – request for approval of a Landscaping Plan Alternative Compliance plan for a former 40-acre tract of the school property abutting to the south per Zoning Code Section 11-12-4.D for a new middle school building for Bixby Public Schools – PC Approved 09/19/2011.

BACKGROUND INFORMATION:

In October of 2012, Staff communicated with Bixby Public Schools' (BPS) Facilities Director Marty Foutch on the BPS acquisition of the subject property from the Bixby First United Methodist Church. BPS acquired the property by deed recorded November 26, 2012. Per communication with Mr. Foutch, BPS desires to lease or otherwise grant use of the property to the Bixby Community Outreach Center (BCOC; www.bixbyoc.org), which accepts donations of money, food, clothing, and other necessities and, in turn, provides them to those members of the Public in need of such assistance. This would be considered a Use Unit 5 "Community Center," which is allowed by Special Exception in the AG district.

The BCOC occupancy may be relatively temporary, and the School District may desire to use the subject property as an actual school facility at some point in the future. Therefore, as advised by Staff, BPS made application for Special Exception to allow the following Use Unit 5 uses: (1) Use Unit 5 Community Center offering financial and other methods of assistance to the Public, and (2) Use Unit 5 school facility use.

ANALYSIS:

Property Conditions. The subject property contains approximately 4 acres with a split-level house toward its centroid. It was sold from the Bixby First United Methodist Church to the School District in November of 2012.

The subject property is relatively flat and appears to drain to the southeast along a 100-year Floodplain drainageway cutting diagonally through the property from northwest to southeast.

Comprehensive Plan. The Comprehensive Plan designates the subject property as (1) Low Intensity/Development Sensitive, (2) Vacant, Agricultural, Rural Residences, and Open Land, and (3) Community Trails.

The proposed Use Unit 5 community center and/or school uses should be considered not inconsistent with the Comprehensive Plan.

Surrounding Zoning and Land Use Compatibility. Surrounding zoning patterns are primarily AG and RS-3.

On the west side of Riverview Rd. are residential homes and vacant lots zoned RS-3 in Midland Addition and the [Original Town of] Bixby. To the south there is the balance of the school's landholding located between Riverview Rd. and Mingo Rd., all zoned AG.

The land to the north is agricultural and zoned AG.

Several applications have previously been approved for Use Unit 5 school use for parts of the BPS's landholding and campuses abutting to the south. This application would be consistent with those approvals and the actual Use Unit 5 use.

For the most part, therefore, the proposed Use Unit 5 community center and/or school uses would be compatible with and complimentary to existing and future surrounding land uses and zoning patterns.

Scale and Intensity of Use. Community centers and schools tend to be fairly intensive land uses when developed, in terms of traffic, building scale, use activity, and infrastructure demands, and in that regard they are comparable to commercial and office developments. Recognizing that the Use Unit 5

community center and/or school facilities may be permitted in an AG district by Special Exception, rather than rezoning which would otherwise be required, the platting requirement of Zoning Code Section 11-8-13 is effectively circumvented. However, in keeping with other school facilities in this area, a requirement for plat or Plat Waiver does not appear necessary, as the planned 60'-wide right-of-way (consistent with a Residential Collector Street) for the widened Riverview Rd. has already been secured, and utilities are already in place or may be extended through existing right-of-way and/or utility easements.

Staff Recommendation. Based on the Comprehensive Plan and surrounding zoning and land use patterns, Staff believes that the proposed Use Unit 5 community center and/or school use 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.

The Applicant was not present.

Darrell Mullins noted that, when Applicants do not attend the meetings, the Board has customarily Denied or Tabled the applications, but in this case, for the School District, he would be in favor of approving the application. Erik Enyart stated that, perhaps, he should have given the School District a special invitation.

One of the Board members asked Erik Enyart if the property would be used for a school facility. Mr. Enyart stated that, in his conversations with Marty Foutch of BPS, he had the impression it would be used temporarily for the Bixby Community Outreach Center, and then ultimately for a school facility.

Darrell Mullins asked what the Bixby Community Outreach Center would do with the property. Erik Enyart responded that it was his impression it would be used for doing the same things the Outreach Center does now, giving food and clothing to the needy, in an expanded facility. Mr. Enyart stated that the Outreach Center currently occupied a smaller facility in downtown Bixby.

Dave Hill asked how long the Outreach Center would occupy the property. Erik Enyart stated that he did not know, but that, through his communication with Marty Foutch, he knew only that it would be temporary. Mr. Enyart stated that BPS may not even know how long they intend to allow the Outreach Center to occupy the property.

Chair Jeff Wilson made a MOTION to APPROVE BBOA-573. Darrell Mullins SECONDED the Motion. Roll was called:

ROLL CALL:

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

A few people got up to leave. Chair Jeff Wilson noted that there was no one signed up to speak on the previous item, and asked if they would like to speak anyway.

A woman who did not give her name asked about the circle [on the case map attached to the Public Notice she received], which included her property, and if that meant someone was going to take her property. Erik Enyart stated that that circle represented a 300' radius from the School's 4-acre property, which was used to determine which property owners were mailed the Public Notice, and that no one was proposing to buy her property.

Mary Mashburn of 2 S. Riverview Rd. stated that some of the neighbors were concerned their property would be taken. Erik Enyart stated that Riverview Rd. was already widened, and all of the properties needed for that had already been purchased. Ms. Mashburn expressed concern for the School District and its expansions. Murray King advised Ms. Mashburn that she would have to ask the School District about that. Darrell Mullins asked if the School District was capable of using Eminent Domain to acquire property. Patrick Boulden and Mr. Enyart confirmed, as the School District was an instrumentality of the state. Ms. Mashburn expressed concern that the School District had expanded on both sides of Riverview Rd., and asked if there was any plan for future expansions. Mr. Enyart stated that if there was a plan for expansion, she would need to ask the School District to see that, as the School was not a part of the City [government] and the City had no part in their campus planning.

4. **BBOA-574 – John Filbeck for Riverview Missionary Baptist Church, Inc.**

Discussion and possible action to approve a Variance from certain signage restrictions for a Use Unit 5 church in the RS-1 Residential Single-Family District.

Property located: All of the Reserve in *Gardenview Addition* a/k/a The W. 305' of the S/2 NW/4 NW/4 Less and Except right-of-way, and also part of the N. 65' of the NW/4 SW/4 NW/4, all in Section 12, T17N, R13E; 13201 S. Memorial Dr.

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, March 22, 2013
RE: Report and Recommendations for:
BBOA-574 – John Filbeck for Riverview Missionary Baptist Church, Inc.

LOCATION: – All of the Reserve in *Gardenview Addition* a/k/a The W. 305' of the S/2 NW/4 NW/4 Less and Except right-of-way, and also part of the N. 65' of the NW/4 SW/4 NW/4, all in Section 12, T17N, R13E
– 13201 S. Memorial Dr.

LOT SIZE: 4 acres, more or less

ZONING: RS-1 Residential Single-Family District & CG General Commercial District

REQUEST: Variance from certain signage restrictions for a Use Unit 5 church in the RS-1 Residential Single-Family District

SURROUNDING ZONING AND LAND USE:

North: CG; The building complex containing the Green Acres Sod Farm, Inc. Corporate Office and the Ron's Hamburgers & Chili restaurant, the South Plaza Center shopping center, and the Kum & Go gas station and the KC Auto Repair automobile repair business.

South: CG & RM-3; The Bixby Funeral Service, the RiverCrest Event Center, and a vacant 1-acre tract all zoned CG and RM-3, and a 4-acre unplatted tract zoned RM-3.

East: RS-1 & RM-3; Single-family residential in Gardenview Addition zoned RS-1, and the Autumn Park assisted living facility to the southeast zoned RM-3.

West: (Across Memorial Dr.) CG & RS-1; Commercial businesses along Memorial Dr.

COMPREHENSIVE PLAN: Medium Intensity + Commercial Area

PREVIOUS/RELATED CASES: (not a complete list)

BZ-35 – L.C. Neel – Request for rezoning from AG to CG for 10 acres (NW/4 SW/4 NW/4), including part of subject property – PC Recommended Approval 03/17/1975 and Town Board of Trustees Approved 05/06/1975 (Ord. # 292).

BBOA-452 – Jim Capps for Riverview Missionary Baptist Church, Inc. – Request for Variance to allow a manufactured or modular building to be used as a classroom for Riverview Missionary Baptist Church for subject property – Withdrawn in April, 2007.

RELEVANT AREA CASE HISTORY: (not a complete list)

BZ-29 – Charles E. Norman for Frates Property, Inc. – Request for CS, OM, RD, RS-3, & RM-2 zoning for approximately 231 acres to the east/southeast of subject property – PC Recommended Approval as requested 10/17/1974 and Town Board of Trustees Approved as requested 11/05/1974 (Ord. # 286).

BZ-34 – L.C. Neel – Request for rezoning from RS-1 to CG for 3.5 acres to the north of subject property (now the South Plaza Center shopping center and the building complex containing the Green Acres Sod Farm, Inc. Corporate Office and the Ron's Hamburgers & Chili restaurant) – PC Recommended Approval 03/17/1975 and Town Board of Trustees Approved 05/06/1975 (Ord. # 292).

BZ-53 – L.C. Neel – Request for rezoning from RD to CS for approximately 5 acres abutting subject property to the east (now the Autumn Park assisted living facility and a related independent living housing section) – PC Recommended Approval 02/14/1977 and Town Board of Trustees Approved 02/15/1977 (Ord. # 327).

BZ-56 – Adrian Watkins for Watkins Brothers – Request for rezoning from AG to CG for approximately 6.25 acres to the west of subject property (now part of Riverview Plaza and part of Riverbend Commercial Center) – PC Recommended Approval 08/29/1977 and Town Board of Trustees Approved 09/19/1977 (Ord. # 336).

BZ-62 – Vernon L. Morgan – Request for rezoning from RS-1 to CG for approximately 1 acre to the north of subject property (now the Kum & Go gas station and the KC-Auto Repair automobile repair business) – PC Recommended Approval 01/30/1978 and Town Board of Trustees Approved 08/07/1978 (Ord. # 361).

BZ-83 – Delcia G. Wilson – Request for CG, RMH, & RM-2 zoning for approximately 70 acres to the west of subject property – PC Recommended Approval and City Council Approved 04/07/1980 (Ord. # 390 Amended by Ord. # 536 01/14/1986).

BBOA-96 – Frank Clifton – Request for Special Exception to allow a horticultural nursery in a CS, RD, & OM district on approximately 15 acres to the south of subject property (includes, more or less, all of Bixby Crossing) – BOA Approved 01/11/1982.

BZ-113 – R. C. Volentine – Request for rezoning from CS, RM-2, RD, & OM to IL for approximately 30 acres (includes, more or less, all of Bixby Crossing and all of Knight Industrial Park) to the south of subject property – PC Recommended Approval of the S. 15 acres (more or less, Knight Industrial Park) 01/25/1982 and City Council Approved the S. 15 acres 02/22/1982 (Ord. # 454).

BZ-123 – L.C. Neel – Request for rezoning from CS and CG to RM-3 for the east approximately 9.5 acres of a reportedly 11.5883-acre original tract abutting subject property to the south and east for apartments – PC Recommended Approval 09/27/1982 and City Council Approved 11/01/1982 (Ord. # 467).

BZ-129 – Watkins Sand Co., Inc. – Request for rezoning from RS-1 to CG for approximately 1.25 acres to the northwest of subject property (now part of Riverview Plaza) – PC Recommended Approval 01/31/1982 and City Council Approved 02/07/1983 (Ord. # 472).

BBOA-142 – Ray A. Bliss for Watkins Sand Co., Inc. – Request for Special Exception to allow a horticultural nursery in a CG district on approximately 1.25 acres to the northwest of subject property (now part of Riverview Plaza) – BOA Conditionally Approved 02/18/1985 per case notes.

BZ-176 – L.C. Neel – Request for rezoning from RM-3 to CG for a strip of land containing approximately 0.4 acres to the south of subject property – PC Recommended Approval 08/25/1986 and City Council Approved 09/23/1986 (Ord. # 543).

BBOA-209 – Wilson Memorial Properties – Request for Variance from the 26' maximum building height to 30' to permit construction of the Daily Family YMCA of Bixby on property to the west of subject property (platted/replatted as Bixby YMCA) – BOA Approved 01/03/1989 per case notes.

BBOA-222 – Dale Isgrigg for Bixby YMCA – Request for Variance of the 170 parking spaces to 87 for the Daily Family YMCA of Bixby on property to the west of subject property in the Bixby YMCA subdivision – BOA Approved 12/04/1989 per case notes.

BBOA-247 – Helen L. Bartlett – Request for Special Exception to allow a “community service cultural & recreational facilities (softball fields)” in a RD & RM-2 district on approximately 15 acres to the south of subject property (includes, more or less, all of Bixby Crossing) – BOA Approved 02/04/1992 per case notes.

BBOA-253 – Jack Selby – Request for Variance of the 600 square foot maximum floor area for detached accessory building in the RS-1 district to permit the existing 720 square foot accessory building for property located to the east/north of subject property at 8300 E. 133rd St. S., Lot 1, Block 3, Gardenview Addition – BOA Approved 07/06/1992 per case notes.

BBOA-254/BBOA-254a – Tim Terral of Pittman, Poe and Associates, Inc. for Lorice T. Wallace – Request for Special Exception to allow a Use Unit 5 golf course in an AG district on 145.1 acres to the southwest of subject property (see PUD 13/13A) – BOA Approved Revised Application 01/04/1993 per case notes.

PUD 13/13A / BZ-201/201A – “River Oaks” – Pittman, Poe and Associates, Inc. – City of Bixby applications (part of the overall 278-acre, dual-jurisdiction PUD for “River Oaks,” a golf and residential development, with the Bixby portion containing approximately 215 acres) requesting RS-1 and AG zoning and then RS-1 and CS zoning and PUD approval for approximately 215 acres to the southwest of subject property – Approved for RS-1 and AG zoning in January, 1993 (Ord. # 681 and # 682) and then re-approved for RS-1 and CS zoning, removing the part that became the Fry Creek Channel and zoning the same AG, in June, 1994 (Ord. # 703 and # 704).

BBOA-298 – Carl C. Jensen – Request for Special Exception to allow a Use Unit 17 used auto sales in a CS district on approximately 15 acres to the south of subject property (includes, more or less, all of Bixby Crossing) – BOA Approved 05/01/1995, but owner found another site and BOA removed the S.E. 07/03/1995.

BBOA-327 – Ted Hill / Jay Ward – Request for Variance from the 100' lot width requirement in the CG district for Lot 1, Block 2, Riverbend Commercial Center (13402 and 13404 S. Memorial Dr.) to the west of subject property to allow for Lot-Split – BOA Approved 04/07/1997 per case notes.

BBOA-401 – Riverview Missionary Baptist Church – Request for Special Exception to allow a Use Unit 5 church use in the RM-3 district for approximately 5 acres abutting subject property to the south – BOA Approved 04/07/2003.

BBOA-408 – Abbas Momeni – Request for Variance from a ground sign setback requirement for the Car Country used automobile sales lot at 13288 S. Memorial Dr. to the west of subject property – BOA Approved 09/02/2003.

BBOA-424 – Gary Fleener for Yale 31 Corporation – Request for Special Exception for a Use Unit 5 preschool/daycare center in an RS-1 district for property located to the northwest of subject property at 13164 S. Memorial Dr. – BOA Approved 07/13/2004.

PUD 49 – “Bixby Crossing” – Sack & Associates, Inc. – Request for PUD supplemental zoning approval on approximately 15 acres to the south of subject property (includes, more or less, all of Bixby Crossing, then the Clifton Industrial Park) – PC Recommended Approval 03/20/2006 and City Council Approved 04/10/2006 (Ord. # 938).

BBOA-446 – Sack & Associates, Inc. – Request for Variance to Section 11-9-17D, parking requirements for ministorage area on approximately 15 acres to the south of subject property (includes, more or less, all of Bixby Crossing) – Approved by BOA 09/05/2006.

BACKGROUND INFORMATION:

ANALYSIS:

Property Conditions. The subject property contains approximately 4 acres and is zoned RS-1 Residential Single-Family District, with the south approximately 65' or 66' zoned CG General Commercial District. It is used as the Riverview Missionary Baptist Church. Until some time in the past few months, the Tulsa County Assessor's parcel records reflected that it was composed of three (3) parcels, but now the records reflect a singular parcel. It is composed of all of the Reserve in Gardenview Addition a/k/a The W. 305' of the S/2 NW/4 NW/4 Less and Except right-of-way, and also part of the N. 65' of the NW/4 SW/4 NW/4,

13

all in Section 12, T17N, R13E. The church also owns the approximately 4-acre tract abutting to the south zoned RM-3, and the first four (4) houses on the south side of 133rd St. S. to the east of the church itself.

Staff found no zoning approval records. However, the plat of Gardenview Addition, recorded 09/19/1955, reflects the existence at that time of a small "CONC. BLOCK CHURCH," two (2) other small, 1-story frame buildings, and a 1-story frame residence. Further, the Tulsa County Assessor's parcel data reflects that the church was constructed in 1972. Since there was a church on the property in 1955 and the County records reflect the church was built in 1972, this suggests that the 1972 date reflects (a) certain expansion(s) to the existing church campus. Bixby's basic Zoning Ordinance was adopted in 1974, and so it would appear that the church and its expansion(s) may predate the requirement of the Zoning Code for a Special Exception when permitted in an RS residential district.

The church has three (3) driveway connections to Memorial Dr. On the north side of the middle one is the church's one (1) ground sign, at approximately 20' in height. This pole-mounted ground sign has identification (ID) signage at the top and a static/conventional changeable letter/message board underneath. This application pertains to the replacement of the signage on this ground sign structure.

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 church would like to replace the signage on the existing pole with a new ID sign, 2' X 12', to read "Riverview Baptist Church," and the static/conventional changeable letter/message board with a 5' 11" X 12' LED / Electronic Message Center (EMC).

Zoning Code Section 11-7B-3.B.4.a and .b provide:

"4. Signs:

a. One bulletin board may be erected on each street frontage of any educational, religious, institutional or similar use requiring announcement of its activities. The bulletin board shall not exceed thirty two (32) square feet in surface area, nor twenty feet (20') in height, and illumination, if any, shall be by constant light.

b. One identification sign may be erected on each perimeter street frontage of a multi-family development, mobile home park, single-family subdivision or permitted nonresidential use. The sign shall not exceed two-tenths ($\frac{2}{10}$) of a square foot of display surface area per linear foot of street frontage; provided, however, that in no event shall the sign be restricted to less than thirty two (32) square feet nor permitted to exceed ten (10) square feet of display surface area. The sign shall not exceed twenty feet (20') in height, and illumination, if any, shall be by constant light."

The church, being (a) a religious use and (b) a permitted nonresidential use by virtue of being legally nonconforming ("grandfathered") in an RS residential zoning district, is permitted both the ID sign and the LED/electronic EMC changeable message board sign. The 20' height would comply with the maximum restriction for the same. The ID sign would comply with the maximum display surface area restriction (note the 10 square feet and 32 square feet minimum/maximum are interpreted as inverted, so 32 square feet is the maximum). At 71 square feet, the LED changeable message sign would exceed the maximum display surface area allowable.

By this application, the Applicant is requesting a Variance from this maximum display surface area restriction.

Zoning Code Sections 11-7B-3.B.4.a and .b provide, in part: "and illumination, if any, shall be by constant light." Similar language is found in Zoning Code Sections 11-7A-3.B.2, pertaining to permitted non-residential uses in the AG district.

This requires an interpretation be rendered as concerns the use of Electronic / LED lighting within the changeable message board element.

Recognizing that, in era in which that text was written (1960s and early 1970s usually), LED technology was not used for signage applications, Staff understands the original intent was for the internally-illuminated signs (plastic-faced signs with a light bulb inside) not to have a 'blinking' function, or external lights cast up (or down) on the sign to be constant.

The principal signage regulations of the Bixby Zoning Code (11-9-21) used to have language that, although it may not have anticipated LED/Electronic signage technology, appeared to have been written broadly enough to proscribe it. It used to read (11-9-21.C.2):

"2. All signs shall be of a constant light. No flashing or intermittent type of lighted signs are allowed."

Prior to 2008, Staff considered that LED / Electronic signs were in fact not of constant light, by necessary function of the technology which relies on turning individual or clusters of Light Emitting Diodes on and off in order to change the imagery and message. Staff observed also that such LED signs may be programmed to flash or be turned on/off, in whole or in part, intermittently. Staff did not consider LED signs to comply with the Zoning Code restriction cited immediately above.

However, the City Council removed that restriction by ordinance around June 2008. The Council specifically expressed that, if a business owner can afford an LED sign, they should be allowed to have one. This clear legislative intent should carry through to permitted non-residential uses in the AG and RS districts.

The "illumination" and "constant light / no flashing or intermittent" provisions are different, apparently intentionally so, and appear to be pointing to two (2) different things. The "illumination" standard remaining in the AG district appears to point to the illumination of the whole sign face, internally or externally by casting light up or down on the sign face.

For all the reasons listed above, Staff does not interpret the "and illumination, if any, shall be by constant light." as restricting LED / Electronic message boards in the RS or AG districts, or in other districts in which that "illumination" language remains.

However, this interpretation is fairly debatable, and so the "Variance from certain signage restrictions" language of this Variance, if required, may be applied to this Electronic / LED format element of the proposed sign.

Both Variance-request elements are inextricably related with a common nexus: The proposal to replace the existing changeable message board sign with a new Electronic / LED EMC sign in excess of the maximum display surface area restriction. Further, the different Zoning Code regulations from which the Variance has been requested all operate to a singular effect: the prohibition of same as currently proposed. Therefore, this report will not divide the separate Variance components into different report sections, except where possible and appropriate.

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 "Building predates current Zoning Code."

The provided argument does not appear to correspond to the question asked. Information is not available to document when the existing sign was constructed. However, Staff cannot conceive a rational argument for the new expansion of the existing sign based on the age of the sign itself. The Zoning Code is designed to allow for the abatement of nonconformities by attrition, and does not condone the creation of new nonconformities.

Further, as the area case history documents, this section of Memorial Dr. between 131st St. S. and Washington Irving Memorial Park & Arboretum has consistently seen commercial development and redevelopment for the past several decades. The subject property is the only RS-1 district fronting on the east side of Memorial Dr. in this area, and its scale (height and mass on the subject property) are more consistent with high intensity and commercial use. The other RS-1 district fronting on the west side of Memorial Dr., located to the northwest of the subject property at 13164 S. Memorial Dr., was approved for a Special Exception to allow a preschool/daycare business in 2004 per BBOA-424. The church on the subject property had, or still has, a children's daycare facility, a commercial use, presumably extending property use throughout six (6) or seven (7) days of the week. Thus, the allowance of a somewhat larger sign that is more consistent with commercial use would seem relatively appropriate for the property.

At four (4) acres in size, the subject property is fairly large, and is the second-largest developed parcel fronting on Memorial Dr. south of 131st St. S. to Washington Irving Memorial Park & Arboretum (the largest being Self Storage Depot). The subject property also has almost 700' of frontage on Memorial Dr., which is the most of any developed parcel within said area.

Recognizing the church has been on the subject property since at least 1955, is only permitted one (1) ground sign that is fairly restricted as to display surface area in relation to the surrounding area, which has overwhelmingly been zoned/rezoned and developed/redeveloped in a commercial nature since, that the property could qualify for commercial zoning, and then be allowed more signage than is presently proposed, and for the other reasons set forth herein, Staff believes that the Application substantially meets the Peculiar, Extraordinary, or Exceptional Conditions or Circumstances test and standard.

Unnecessary Hardship. The Applicant claims that an unnecessary hardship would be caused by the literal enforcement of the Zoning Code because "Zoning restrictions cause proposed signage [to be] unallowed."

As it would appear to relate to this test and standard, the supplemental narrative provides, "As many know, the church relies on [its] population to succeed, and allowing this exception can assist the church by using signage to gain more members, use an affordable form of advertising for upcoming events, promote community awareness, and contribute to the beautification of Memorial Drive."

As claimed by the Applicant, the restriction from exceeding the maximum display surface area could be considered an Unnecessary Hardship.

Finding of No Substantial Detriment or Impairment. The Applicant claims that the requested Variance would Not Cause Substantial Detriment to the Public Good or Impair the Purposes, Spirit and Intent of the Zoning Code or the Comprehensive Plan because "The signage will not be visible in the Residential area and will contribute to the attractiveness to Memorial Drive."

Based on aerial GIS data, it appears that the sign, perpendicular to Memorial Dr., would have sight lines extending to some of the houses in Gardenview Addition and Henry Ferguson Addition to the northeast.

Signage spacing, height, and display surface area restrictions are generally imposed to help 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. It is counterintuitive to argue that a larger sign here will "contribute to the attractiveness to Memorial Drive."

As it would appear to relate to this test and standard, the supplemental narrative provides, "The proposed signage is the exact size of three signs currently located on Memorial Drive within two miles of the church building. As many know, the church relies on [its] population to succeed, and allowing this exception can assist the church by using signage to gain more members, use an affordable form of advertising for upcoming events, promote community awareness, and contribute to the beautification of Memorial Drive."

The narrative does not specify what signs are referenced, but the provided attachments include narrated photos of the Boardwalk on Memorial shopping center's new sign at 12345 S. Memorial Dr. and the BTC Broadband sign at 11134 S. Memorial Dr., both of which are zoned CS commercial.

The Comprehensive Plan designates the subject property as Medium Intensity + Commercial Area. Surrounding zoning patterns are primarily CG and CS to the north, northwest, west, southwest, and south, along both sides of Memorial Dr. It is reasonable to surmise that an application to rezone the property to Commercial would be successful, provided a PUD was also imposed to help mitigate future redevelopment's effects on the residential properties to the east. If zoned Commercial, the display surface area restrictions in place here would not be an issue, and multiple ground signs would be permitted, larger, and with more display surface area.

See also the argument under the Peculiar, Extraordinary, or Exceptional Conditions or Circumstances section describing the church's situation in an RS-1 district surrounded by commercial zoning and land use, and the size and frontage of the subject property lot.

Therefore, 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. The Applicant claims that the requested Variance would be the Minimum Necessary to Alleviate the Unnecessary Hardship because "Adequate signage will attract more church members and raise community awareness."

The provided argument does not appear to correspond to the question asked.

As it would appear to relate to this test and standard, the supplemental narrative provides, "The proposed signage is the exact size of three signs currently located on Memorial Drive within two miles of the church building."

Recognizing the Applicant proposes a 71 square foot Electronic / LED EMC, precisely 39 square feet more than the 32 square feet allowed, a Variance of 39 square feet would appear to be the Minimum Necessary to Alleviate the Unnecessary Hardship, should hardship be determined.

Staff Recommendation. 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, and recommends Approval.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Jill Blankenship [of Crown Neon Signs] stated that she represented the company assisting the church with the sign. Ms. Blankenship stated that [the pastor] wanted to not have to manually change the letters, and that the message center would be used to promote church "get togethers" and other church functions.

Murray King asked if the sign would be like the *Sutherland's* sign, and Jill Blankenship responded affirmatively.

A Board member asked how much larger the new sign would be. Jill Blankenship stated that the existing message center was 4' X 8' and would be expanded from 32 square feet to 71 square feet [of display surface area]. Ms. Blankenship stated that the main ID sign would be minimized, and that the combined total [display surface area] would be 95 square feet, which was two (2) square feet smaller than the existing sign.

Jack Selby [of the Bixby Funeral Service] asked Jill Blankenship to confirm the new sign would "not hide my sign," and Ms. Blankenship stated that it would not. Mr. Selby asked who would enforce the if the sign was not installed according to what was permitted. Erik Enyart responded that the Building Inspector was responsible for inspecting and confirming that what they build is consistent with what the City permitted.

Dave Hill noted that the property used to have a "beer joint" on it. Erik Enyart stated that, per the plat of [*Gardenview Addition*], there was a small, concrete block church toward the center of the church's current property, and he assumed it had always been a church from at least that time, the 1950s, to the present. Mr. Enyart stated that the plat also showed a parcel at the northwest corner of the current acreage that had a house on it. Jack Selby stated that the beer joint was on the property in the 1940s.

Jack Selby asked Dave Hill if he was a member [of the Riverview Missionary Baptist Church], and Mr. Hill responded that he used to be a long-time member but now attended another local church.

Patrick Boulden asked Erik Enyart if he had not said that [the sign would be permitted] if this was a business, and Mr. Enyart responded affirmatively, and stated, "If it were zoned Commercial, [the church] would be permitted more signage than they are proposing now." Mr. Boulden

cautioned the Board from discriminating against the signage because the property was a church. Mr. Boulden recommended Approval.

Chair Jeff Wilson asked to entertain a Motion. Murray King made a MOTION to APPROVE BBOA-574. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

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

5. **BBOA-575 – Blake Fugett.** Discussion and possible action to approve a Variance from the accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new 40.25' X 60.25' (2,425) square foot accessory building in the rear yard for property in the RE Residential Estate District.
Property located: Part of the E/2 SW/4 of Section 22, T17N, R13E; 5257 E. 161st 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, March 27, 2013
RE: Report and Recommendations for:
BBOA-575 – Blake Fugett

LOCATION: – Part of the E/2 SW/4 of Section 22, T17N, R13E
– 5257 E. 161st St. S.
LOT SIZE: 1.2 acres, more or less
ZONING: RE Residential Estate District
REQUEST: Variance from the accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new 40.25' X 60.25' (2,425) square foot accessory building in the rear yard for property in the RE Residential Estate District
SURROUNDING ZONING AND LAND USE: RE & AG; Vacant and agricultural with rural residential to the northwest along 161st St. S. and Braden Ave. zoned AG in unincorporated Tulsa County
COMPREHENSIVE PLAN: Low Intensity + Residential Area
PREVIOUS/RELATED CASES: (not a complete list)

BZ-120 – Calvin Tinney – Request for rezoning from AG to RS-3 for the E/2 of the SW/4 of this Section (80 acres) (including subject property) – PC Recommended Approval 08/30/1982 and City Council Approved 09/07/1982 (Ord. # 460).

BZ-126 – Georgina B. Landman, attorney (not representing property owner) – Request for rezoning from RS-3 to RS-1 for the E/2 of the SW/4 of this Section (80 acres) (including subject property) – PC Recommended Approval 12/27/1982 and City Council Denied 01/03/1983 per case notes.

BZ-181 – W.S. Atherton – Request for rezoning from AG & RS-3 to CG, RM-3, and RE for approximately 240 acres (including subject property) for a future (but never built) "Atherton Farms Equestrian Estates" residential subdivision – City Council Approved 06/23/1987 (Ord. # 562).

BBOA-190 – W.S. Atherton – Request for "Use Variance" to allow the keeping of horses on individual lots as an accessory use for approximately 240 acres (including subject property) for a future (but never built) "Atherton Farms Equestrian Estates" residential subdivision – BOA Approved 07/13/1987.

PUD 20 – Atherton Farms Equestrian Estates – Phillip Faubert – Request for rezoning from AG & RS-3 to CG, RM-3, and RE for approximately 240 acres (including subject property) for a future (but never built) “Atherton Farms Equestrian Estates” residential subdivision – Recommended for Approval by PC 01/20/1998. However, this case was evidently never presented to the City Council, as it did not appear on any agenda from January 26, 1998 to April 27, 1998, no Ordinance was found relating to it, and there are no notes in the case file suggesting it ever went to City Council. Further, PUD 20 does not exist on the official Zoning Map. An undated application signed by Phillip Faubert from circa March, 2001 was found in the case file requesting to “rescind PUD 20,” but no records or notes were found to determine the eventual disposition of this request, if any.

BL-228 – Phillip Faubert – Request for Lot-Split to separate a 2.7-acre tract from 240 acres from balance of approximately 240 acres (including subject property) – PC Approved 03/16/1998 and City Council Approved 03/23/1998.

BL-279 – Wayne L. Haynes for the William and Ann Atherton Trust – Request for Lot-Split approval to separate subject property from the E/2 of the SW/4 of this Section (80 acres) – Application dated 07/01/2003 but no record of disposition or consideration by Staff or Planning Commission found – see BL-284.

BL-284 – Wayne L. Haynes – Request for Lot-Split approval to separate subject property from the E/2 of the SW/4 of this Section (80 acres) (same as BL-279) – Prior Approval date stamps on deeds dated 11/24/2003 but no record of disposition or consideration by Planning Commission found in calendar year 2003 or the first 2 months of calendar year 2004.

RELEVANT AREA CASE HISTORY: (not necessarily a complete list and does not include cases in unincorporated Tulsa County)

BZ-238 – W.S. Atherton – Request for rezoning from AG to RE for approximately 10 acres to the northeast of subject property for part of a future (but never built) “Atherton Farms Equestrian Estates” residential subdivision – City Council Approved 02/23/1998 (Ord. # 768).

BBOA-485 – Phillip Faubert – Request for Special Exception per Zoning Code Section 11-7D-2 Table 1 to allow a Use Unit 6 single-family dwelling and customary accessory structures in the CG district for a 2.7-acre tract to the northeast of subject property – BOA Approved 08/04/2008.

BBOA-486 – Phillip Faubert – Request for Variance from certain bulk and area requirements of Zoning Code Section 11-7D-4 Table 2, including, but not necessarily limited to: The setback from an abutting R district and the 100-foot minimum street frontage requirement, to allow a Use Unit 6 single-family dwelling and customary accessory structures in the CG district for a 2.7-acre tract to the northeast of subject property – BOA Approved 08/04/2008.

BACKGROUND INFORMATION:

ANALYSIS:

Subject Property Conditions. The subject property is an unplatted tract of approximately 1.2 acres, addressed 5257 E. 161st St. S., and Zoned RE. The parcel contains an existing house located just north of the lot centroid.

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 Applicant is requesting a Variance from the accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new 40.25' X 60.25' (2,425 square foot) accessory storage building for property in the RE Residential Estate District.

Zoning Code Section 11-8-8.B.5 provides:

“5. In the RE and RS districts, detached accessory buildings may be located in a rear yard, provided the accessory building(s) in the aggregate do not cover more than twenty percent (20%) of the area of the rear yard or exceed eight hundred (800) square feet of floor area, whichever is less.

19

No accessory building shall exceed the height of the primary dwelling on the lot.

In the RE and RS districts, lots containing at least one acre of lot area shall be permitted to exceed the eight hundred (800) square foot floor area limitation by 11.6 percent. Further, lots containing 1.25 acres or more of lot area shall be permitted to exceed eight hundred (800) square feet by an additional 11.6 percent for each one-fourth ($\frac{1}{4}$) of an acre over one acre, provided that in no case shall accessory building(s) in the aggregate exceed the square footage of the first floor of the primary dwelling or two thousand four hundred (2,400) square feet, whichever is less, or cover more than twenty percent (20%) of the area of the rear yard. (Ord. 2031, 12-21-2009)"

As the subject property is in the RE residential zoning district and contains approximately 1.2 acres, the maximum allowable detached accessory building size is 892.8 square feet.

The "sliding scale" was introduced as a measure of flexibility, along with an increase in the basic maximum square footage from 750 square feet to 800 square feet, by Ordinance # 2031, approved December 21, 2009. It was designed to allow people to have larger accessory buildings, if they had enough land so that the accessory building did not dominate the parcel aesthetically and so detract from the neighborhood. The "sliding scale" was calculated in order to start at 800 square feet and increase regularly for each $\frac{1}{4}$ acre increment to the maximum of 2,400 square feet, which requires a lot containing slightly more than 3.25 acres.

This is the sixth application for Variance which has been received since the added flexibility was created, and it is requesting a Variance to exceed even the new flexibility. The first was BBOA-550 – Mitch & Gail Pilgrim, which the Board approved 12/05/2011 for that property located in Bixhoma Lake Estates. The second was BBOA-558 – John Ryel, which the Board approved 05/07/2012 for that property located in the Houser Addition. On August 06, 2012, the Board of Adjustment denied an application to build a 5,000 square foot addition to an existing 900 square foot accessory building for an unplatted 1-acre tract at 14426 S. Harvard Ave. (BBOA-565 – Robert Campbell III & Karen M. Campbell). On October 01, 2012, the Board approved BBOA-568 – Roger O. Nunley, Jr., allowing allow a new 960 square foot addition to an existing 2,000 square foot accessory structure for property in the RS-1 District at 8703 E. 124th St. S. in Southern Memorial Acres No. 2. BBOA-572 – Spencer Thompson is pending consideration on this agenda.

Unnecessary Hardship. The Applicant claims that an Unnecessary Hardship would be caused by the literal enforcement of the Zoning Code because "It will create this due to weathering on my assets by forcing them outside such as boats, tractor & ATV since current codes to not permit room for such things." Elsewhere on the application form, the Applicant has further explained the need thus, "The use of the barn/shop will be for storage of two boats, one bobcat & a four wheeler. The building would match house & wouldn't be an eyesore."

The argument appears to be that the failure to be granted Variance would deprive the owner of the right to exceed the aggregate maximum floor area for an accessory building, and as a result, lack of proper shelter for (some amount of) relatively expensive personal property. Staff does not dispute that this claim is true, and may amount to an Unnecessary Hardship.

Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. The Applicant responded to the question asking how the subject property and its Condition or Situation is Peculiar, Extraordinary, and/or Exceptional by stating, "My property is in the country it butts up to a large undeveloped trac[t] of land. The nearest home is approximately 160 yds away."

The provided argument is self-explanatory.

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 "If granted the shop/barn will match home, it will also place current items inside away from public sight."

The provided argument is self-explanatory.

Of the several fundamental purposes for imposing maximum accessory building size and rear yard placement restrictions, Staff believes the primary reason is for the sake of consistency of design, proportionality, and mode of placement of structures (aesthetics).

The building is proposed to be constructed in the northwest corner of the lot. Compliance with the 40' rear yard setback requirement in the AG district has not been demonstrated on the provided

information. The lot is highly visible from 161st St. S., due to the flat grade and lack of vegetation or development on surrounding parcels.

The unplatted subdivision, which may now or once have gone by the name "Tracts of [R]ayford Luker" or "Tracts of Raiford Luker," abuts to the west in the W/2 SW/4 of this Section in unincorporated Tulsa County. The rural residential tracts contained therein commonly contain approximately 2.5 acres apiece. Considering the size of the tracts and the rural setting, the houses do not appear to have a large number of accessory buildings, nor do the ones appearing in 2012 aerial imagery appear to be particularly large in size (1 ~30' X 40', 1 ~40' X 60' observed and estimated).

Approximately 239 acres abutting to the north and east are owned by W. S. & Delores Ann Atherton. Once planned for an equestrian-related residential subdivision, owners' representative has claimed that the land is not now, nor will it soon be scheduled for such development. When and if the land is developed, presumably at RE-densities/intensities, it is not known if accessory buildings will be proscribed or permitted, nor is it known how that area will relate to the subject property.

Finding of Minimum Necessary. The Applicant claims that the requested Variance would be the Minimum Necessary to Alleviate the Unnecessary Hardship because "It would be the min. amount of storage needed to house all personal assets without causing depreciation due to weather, vand[a]lism & theft."

The provided argument is self-explanatory.

Recognizing the intent behind the "sliding scale" flexibility provision, Staff believes it should be somewhat more difficult to justify this test and standard. If the Board is amenable to this application, it must find that the proposed aggregate 2,425 square feet of accessory buildings, 2.7 times the 800 square foot maximum, is the Minimum Necessary to Alleviate the Unnecessary Hardship.

Staff Recommendation. Except as noted otherwise hereinabove, Staff believes that the arguments provided by the Applicant and Staff appear to substantially meet some of the tests and standards of the Zoning Code and State Statutes. To the extent the arguments are found lacking, the Board may wish to consider other arguments that the Applicant and Board may discover during public hearing and consideration of this case at the meeting.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Blake Fugett of 5257 E. 161st St. S. stated that he was building a shop to store two (2) boats and a bobcat [machine], which he presently stored near Jenks at Jones Airport. Mr. Fugett stated that the barn would match his house, and would be a pre-engineered steel building, 16' tall at its peak, and would be located in the corner of the lot.

Patrick Boulden asked what was the nature of the building. Murray King asked Blake Fugett what his business was, and Mr. Fugett responded he had a landscaping business, but he stored his equipment at 175th St. S. and Harvard Ave. at his parents' house on 60 acres. Mr. Fugett stated that the only piece of equipment [related to the business] he would store here was the bobcat, which was a \$40,000 machine and which he wanted to keep close by and out of the rain.

Jack Selby asked Blake Fugett to confirm there would be no manufacturing in the building, and Mr. Fugett responded there would not.

Erik Enyart noted that the property was somewhat unique, in that it was [the edge of] the City Limits, and if one went west, all of that area was in the [unincorporated part of Tulsa] County.

Chair Jeff Wilson asked to entertain a Motion. Dave Hill made a MOTION to APPROVE BBOA-575. Chair Jeff Wilson SECONDED the Motion. Roll was called:

ROLL CALL:

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

6. BBOA-576 – Jack Selby for the Bixby Rotary Club and Bixby Funeral Service.

Discussion and possible action on an appeal of a sign building permit denial, and the interpretation on which it was based, pursuant to Zoning Code Sections 11-4-6 and 11-4-7, which permit proposed the construction of signs on property in the CG General Commercial District, and to allow the project development to proceed.

Property located: Part of the SW/4 NW/4 Section 12, T17N, R13E; Northeast corner of the intersection of 134th St. S. and Memorial Dr.

Chair Jeff Wilson introduced the item and called on Erik Enyart for the Staff Report and recommendation. Mr. Enyart began to summarize the Staff Report.

Applicant Jack Selby of 14814 S. 52nd E. Ave. stated that attorney Jim Ferris was representing this application. After further discussion, Mr. Ferris stated that his client would like the application Continued for two (2) months.

Patrick Boulden stated that he knew there was a rule in the City of Tulsa where an application had to be decided in 60 days. Erik Enyart stated that he was not aware of any local rule requiring this, and unless State Statutes or the Zoning Code provided otherwise, he had never observed there to be a problem for an application to be Continued for several months at a time. Mr. Enyart stated that he considered it necessary that, if Continued, the Board would have to Continue the Public Hearing and consideration of the item to a "date certain." Mr. Enyart stated that the Regular Meeting two (2) months from now would be June 03, 2013. Mr. Enyart stated that he had no objections to the Continuance, especially if requested by the Applicant. After further discussion, regarding the Continuance question, Mr. Boulden stated that the Board would be "safe on that one."

Chair Jeff Wilson made a MOTION to CONTINUE BBOA-576 to the June 03, 2013 Regular Meeting, as requested by the Applicant. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

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

ADJOURNMENT

Chair Jeff Wilson asked to entertain a Motion to Adjourn. Dave Hill made a MOTION to ADJOURN. Chair Jeff Wilson SECONDED the Motion. Roll was called:

ROLL CALL:

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

The meeting was Adjourned at 6:45 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary

23

BIXBY BOARD OF ADJUSTMENT
SIGN IN SHEET
DATE: April 01, 2013

NAME	ADDRESS	ITEM
1. <u>Donna Stone</u>	<u>323 E Breckenridge</u>	<u>Zoning</u>
2. <u>Jack Mayfield</u>	<u>11616 S. Fulton Ave</u>	<u>Billboard</u>
3. <u>Paul Kelley</u>	<u>14814 S. 52nd Ave</u>	<u>Billboard</u>
4. <u>Bob Fugle</u>	<u>5257 E 161st S</u>	<u>Barney</u>
→ <u>Spencer Thompson</u>	<u>762 E 131st Street South</u>	<u>Variance for Building</u>
✓ 6. <u>Mary Mashburn</u>	<u>2 South Riverview Dr</u>	
<u>A. Carlos CASTILLO</u>	<u>6 N Riverview</u>	
8. <u>Buster McCurtain</u>	<u>1442 Circle</u>	<u>Bixby Rotary</u>
✓ 9. <u>Jill Blankenship</u>	<u>13201 S. Memorial</u>	<u>Variance for sign</u>
→ 10. <u>John Thompson</u>	<u>7702 E 131st Street</u>	<u>Variance for building</u>
11. <u>John Sawyer</u>	<u>3939 E 110th St</u>	<u>Billboard</u>
12. _____	_____	_____
13. _____	_____	_____
14. _____	_____	_____
15. _____	_____	_____
16. _____	_____	_____
17. _____	_____	_____
18. _____	_____	_____
19. _____	_____	_____
20. _____	_____	_____



CITY OF BIXBY
P.O. Box 70
116 W. Needles Ave.
Bixby, OK 74008
(918) 366-4430
(918) 366-6373 (fax)

STAFF REPORT

To: Bixby Board of Adjustment
From: Erik Enyart, AICP, CFM, City Planner / Floodplain Administrator 
Date: Thursday, April 18, 2013
RE: Report and Recommendations for:
BBOA-577 – Khalid Bakri

LOCATION: – 12808 S. Mingo Rd.
– Part of the S/2 NE/4 SE/4 Section 01, T17N, R13E

LOT SIZE: 7 acres, more or less

ZONING: AG General Agricultural District

SUPPLEMENTAL ZONING: None

EXISTING USE: Vacant

REQUEST: Variance from the Bixby Floodplain Regulations, in accordance with the Flood Damage Prevention provisions of City Code Section 13-2B-12, to allow for the construction of a horse stable (barn) building structure with the dirt floor located below the Base Flood Elevation (BFE) of the 100-year (1% Annual Chance) Regulatory Floodplain

COMPREHENSIVE PLAN: Low Intensity + Vacant, Agricultural, Rural Residences, and Open Land

PREVIOUS/RELATED CASES:

Sketch Plat of "Pecan Grove Estates" – Request for Sketch Plat approval for a subdivision of 14 lots on approximately 36.18 acres (evidently that part of the S/2 N/2 NE/4 Section 01,

T17N, R13E lying east of the Fry Creek # 1 right-of-way), including subject property – PC reviewed and discussed only 07/17/2000.

Preliminary Plat of “Pecan Grove Estates” – Request for Preliminary Plat approval for a subdivision of 14 lots on approximately 36.18 acres (evidently that part of the S/2 N/2 NE/4 Section 01, T17N, R13E lying east of the Fry Creek # 1 right-of-way), including subject property – PC Conditionally Approved 08/21/2000. A 02/21/2001 letter from then Assistant City Manager Mike Jones indicates City Council had previously Denied the application.

BACKGROUND INFORMATION:

History of the Application. By email on February 19, 2012, Staff advised the Applicant about the Floodplain situation, including that “[t]he property is in the 100-year (1% Annual Chance) Regulatory Floodplain per the FEMA Floodplain maps and cannot be built upon without (1) elevating the structure to 1 foot above [Base Flood Elevation], as evidenced by an Elevation Certificate, (2) providing compensatory storage, and (3) complying with stormwater requirements of Title 13. This will require your hire of a qualified engineer to produce calculations and plans in satisfaction of floodplain and stormwater regulations.”

The Applicant purchased the subject property of approximately 7 acres (7.1 acres if including 24.75’-wide Statutory Right-of-way) by deed dated December 17, 2012 and recorded on December 18, 2012.

The Applicant has contacted Staff several times in the months since the purchase asking various questions about site development, including a house at some future date. On March 20, 2013, the Applicant visited with City Staff to ask questions about constructing a “horse barn” on the subject property, to shelter a certain number of horses already purchased by the Applicant. Staff explained the Floodplain Development Permit and Floodplain Regulation options in detail, and provided the Applicant a drawing with notes showing the three (3) options that would allow for compliance with the Floodplain Regulations:

1. Flow-through foundation, elevate 1st Floor 1’ above 100-year Base Flood Elevation
2. Floodproof – airtight below Base Flood Elevation (BFE)
3. Elevate ground to 1’ above BFE – Requires Engineer and Compensatory Storage

Instead of selecting one of these options, the Applicant has requested a Floodplain variance to allow the construction of the horse-barn building at grade. During an internal Staff Meeting held on or around March 21, 2013, the City Manager contacted the property owner and discussed the situation, and the owner asked the City Manager to expedite the approval process by calling a Special Meeting of the Board of Adjustment. On March 22, 2013, the Applicant submitted the Floodplain variance application. Staff contacted the Board Chair, who agreed to call a Special Meeting if quorum could be determined. Based on Board member availability and Public Notice requirements, the earliest Special Meeting date was April 23, 2013, which is what this application has been scheduled for.

Floodplain Variance Application Process. Staff has found three (3) prior Floodplain variances presented to the Bixby Board of Adjustment. BBOA-423 – Karen Johnson was a request for

Floodplain variance "to allow fill in the floodplain without providing compensatory storage (Engineering Design Standards Section E)" for Lot One (1) Block One (1), *Bixby Industrial Park*, addressed 7580 E. 151st St. S., a former NAPA auto parts store that had been destroyed by fire. The Bixby Board of Adjustment Denied the application on July 13, 2004, as recommended by Staff.

On August 06, 2012, the Board of Adjustment approved BBOA-563 and BBOA-564 (Program Management Group, LLC for Tulsa County) pertaining to restroom buildings in Haikey Creek Park. BBOA-563 allowed the replacement of a restroom building, and BBOA-564 allowed the construction of a new restroom building, both having the First Finished Floor located below the BFE of the 100-year (1% Annual Chance) Regulatory Floodplain. In the case of BBOA-564, the new restroom was approved for location in the Floodway.

These cases were found among those applications to the Board of Adjustment using the conventional case numbering system, "BBOA-[sequential number]." It is possible, however, that other Floodplain variances came to the Board of Adjustment, or to some other City administrative body, but were not found due to not being among the enumerated case numbers. Staff has not discovered any hard-copy case files or electronic records for any other Floodplain variances, however.

In all three (3) cases, the Public was given a Public Notice by way of (1) newspaper publication, and (2) mailing of the Public Notice to property owners within a 300' of that property. Based on this precedent, Staff has advertised the Public Notice for this application in the newspaper and by direct mailing to 300' radius property owners, and has posted a Board of Adjustment notice sign on the property, as per custom.

Pecan Grove Estates. The subject property is located in an area of approximately 36.18 acres, that part of the S/2 N/2 NE/4 Section 01, T17N, R13E lying east of the Fry Creek # 1 right-of-way. The area is an unplatted, informal subdivision containing approximately 11 tracts of land and five (5) houses. All tracts have access to Mingo Rd. via a private drive which runs east-west lengthwise through the center (more or less) of the acreage. The drive has a fairly large bridge over the deep drainage ditch along the west side of Mingo Rd.

The area may have been informally known as "Pecan Trail Estates," per a 02/21/2001 letter from then Assistant City Manager Mike Jones to all of the property owners within it. However, Staff believes it more likely that it may have gone by another name. On August 21, 2000, the Planning Commission conditionally approved a Preliminary Plat of "Pecan Grove Estates," a subdivision of 14 lots on approximately 36.18 acres (evidently that part of the S/2 N/2 NE/4 Section 01, T17N, R13E lying east of the Fry Creek # 1 right-of-way), which area included the subject property. The Sketch Plat by this name was reviewed and discussed only by the Planning Commission on July 17, 2000. The Planning Commission Conditionally Approved the Preliminary Plat of "Pecan Grove Estates" on August 21, 2000. The only records of this plat were found in the Planning Commission Minutes; no copy of that plat and no case files were found. It appears the subdivision did not proceed beyond Planning Commission approval of the Preliminary Plat. The 02/21/2001 letter states "the submittal was denied by the City Council because it did not comply with City ordinances and regulations."

At 14 lots, the lots would average roughly the size of several of the ones that have been created. It would have, evidently, incorporated several tracts of land already in existence as of the plat's review in 2000. The "subdivision" appears to have been created by a series of deeds parceling out tracts of approximately 2.51 acres and larger. The first one appears to have been a deed for six (6) acres recorded 12/08/1994 (Book 5677 Page 500). Today this is the "flag lot" of approximately three (3) acres at 12830 S. Mingo Rd. and the vacant tract of approximately three (3) acres immediately to the west. Another parcel (not necessarily the second in the area) was per a deed for 2.5 acres recorded 05/22/1998 (Book 6054 Page 2286), now addressed 12832 S. Mingo Rd. The other tracts in this area appear to have been deeded around the late 1990s / early 2000s.

None of the deeds of which Staff has copies have Lot-Split approval certifications on them. There were two (consolidated?) Lot-Split applications, BL-189 and BL-190 (Benjamin Dixon as Applicant in both cases), Conditionally Approved 03/17/1995. However, the land division as approved was not ultimately realized – the lot line patterns are now different than then proposed. In all of this acreage, there was only one (1) other Lot-Split application, BL-278 (Benjamin Dixon), which proposed the creation of the "flag lot" of approximately three (3) acres at 12830 S. Mingo Rd. and the vacant tract of approximately three (3) acres immediately to the west. It was administratively Approved by Staff March 14, 2003. There is no record of Planning Commission approval or consideration of this case between March 17, 2003 (at which meeting BL-277 was considered) and November 17, 2003 (at which the next Planning Commission-considered Lot-Split was approved, BL-282).

Lot-Split approval may not have been required, as the Subdivision Regulations have jurisdiction over "subdivisions," defined in Section 12-1-5 as:

"SUBDIVISION:

A. The division of a parcel of land shown as a unit or contiguous units on the last preceding tax roll into five (5) or more lots or parcels, any one of which contains two and one-half (2¹/₂) acres or less, for the purpose of transfer of ownership or building development;

..." (emphasis added)

And "Lot-Splits," defined in Section 12-1-5 as:

"LOT SPLIT: A transfer or agreement or negotiation to transfer any tract of land of two and one-half (2¹/₂) acres or less where such tract of land was not shown of record in the office of the county clerk and does not comprise an entire lot of record. The lot split must meet minimum requirements for bulk and area in the particular zoning district." (emphasis added)

The Tulsa County Assessor's records indicate that each tract is 2.51 acres or larger, and based on Staff's calculations, all of them are at least 2.5097 acres, with one (1) exception. A deed recorded 02/06/2004 (Book 7228 Page 2399) conveyed a 30' wide strip of land lying east of the vacant tract of 2.51 acres (recorded 08/09/2000 Book 6400 Page 2216). It would appear to

28

have been part of the overall leftover tract until it was deeded separately in 2004. There is a title curative statute that essentially states that, even if the deed to a parcel of land does not bear the approval certificate of the Planning Commission having jurisdiction, after it has been filed of record for a period of five (5) years, it is cured of that title defect. That does not, however, relieve the property owner from compliance with the Bixby Subdivision Regulations.

ANALYSIS:

Property Conditions. The subject property consists of an unplatted tract containing approximately 7 acres (7.1 acres if including 24.75'-wide Statutory Right-of-way), is zoned AG, and is presently vacant. It is approximately 934' deep and has 331.2' of frontage on Mingo Rd. The property is relatively flat and appears to drain to the east to an unnamed tributary of Haikey Creek, which traverses the subject property from north to south along a deep ditch paralleling the west side of Mingo Rd. Per the plans for the Haikey Creek Flood Improvement Project, this tributary, downstream of the subject property at 131st St. S., will be rerouted within a new channel to become a tributary of another drainageway, possibly known as "Twin Hills Creek." Per the EPA My WATERS Mapper, "Twin Hills Creek" was that drainageway that, since the Fry Ditch project was constructed, is now known as Fry Creek # 2 from its northernmost extent to its confluence with Fry Creek # 1. The creek was also previously rerouted southwest of the intersection of 141st St. S. and Mingo Rd. to discharge directly to the Arkansas River.

See the relevant part of the Background Information section of this report for a longer description of the "Pecan Grove Estates" unplatted subdivision, in which the subject property is located.

The subject property and all other tracts in "Pecan Grove Estates" have access to Mingo Rd. via a private drive which runs east-west lengthwise through the center (more or less) of the 36-acre area. The drive has a fairly large bridge over the deep drainage ditch along the west side of Mingo Rd. It is unlikely the Applicant will construct a new bridge over the drainage ditch, and the Applicant has expressed to Staff intent to access the property via the existing private drive, on which the subject property has approximately 500' of "frontage." Per the provided site plan, the only easement found by the surveyor attending the drive and affecting the subject property was a "Unrecorded 30' Easement," which is described in the Notes as "An undated and unrecorded 30' "Roadway Easement", signed by Grantor "Mark Anthony Parker and Karen Denise Parker, Husband and Wife", to Grantee "Mary Kay Campbell" is deficient but shown on this survey in a reasonable position based on description and actual improvements located. Affects subject property as shown. The surveyor makes no determination to its validity." On April 17, 2013, Staff has contacted the owner of the parcel on which the front part of the drive is located to ask if there was "an easement associated with the existing drive that would allow the City of Bixby to use the drive to do permit inspections, or otherwise if you would grant temporary license to the City officials for purposes of inspections." Staff recommends this Floodplain variance be subject to the receipt of documentation adequately demonstrating the City will have legal access to the property for purposes of permit inspections.

Tests and Standard for Granting Variance. Although the term "variance" in the context of FEMA/NFIP-required Floodplain Regulations is somewhat similar to "Variance" as used in the

context of a Zoning Code, there are some differences. Both include somewhat similar versions of prerequisites mutually corresponding to (1) "hardship," (2) "no substantial detriment," and (3) "minimum necessary." The Floodplain variance does not have a version of the "unique conditions" test and standard such as a Zoning Code Variance has. A Floodplain variance, unlike a Zoning Code Variance, has a "good and sufficient cause" prerequisite and also recognizes lot size as a factor. All of these Floodplain variance factors are considered in the analysis that follows.

FEMA [44 Code of Federal Regulations (CFR) Section 59.1] defines "variance" as:

"*Variance* means a grant of relief by a community from the terms of a flood plain management regulation."

Bixby Floodplain Regulations / City Code Section 13-2B-12 provides the authority and conditions for granting Floodplain variances:

"13-2B-12: VARIANCE PROCEDURES:

- A. Requests: The board of adjustment shall hear and render judgment on requests for variances from the requirements of this chapter, including articles A through D.
- B. Authority: The board of adjustment shall hear and render judgment when it is alleged there is an error in any requirement, decision or determination made by the floodplain administrator in the enforcement of this chapter, including articles A through D.
- C. Persons Permitted: Any person aggrieved by the decision of the board of adjustment may appeal such decision in the courts of competent jurisdiction.
- D. Records Maintained; Reporting: The floodplain administrator shall maintain a record of all actions involving an appeal and shall report variances to the federal emergency management agency (FEMA) upon request. [cf. 44 CFR Section 60.6(a)(6)]
- E. Historic Places: Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places, or a state inventory of historic places, without regard to the procedures set forth in the remainder of this section. [cf. 44 CFR Section 60.6(a)]
- F. Lot Size: Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half ($\frac{1}{2}$) acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in section 13-2A-4 of this chapter have been fully considered. As the lot size increases beyond the one-half ($\frac{1}{2}$) acre, the technical justification required for issuing the variance increases. [cf. 44 CFR Sections 60.6(a) and 60.6(a)(2)]

- G. Conditions Attached: Upon consideration of the factors noted above and the intent of this chapter, including articles A through D, the board of adjustment may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter, including articles A through D.
- H. Increase In Flood Levels Prohibited: Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result. [cf. 44 CFR Section 60.6(a)(1)]
- I. Prerequisites: Prerequisites for granting variances:
1. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief. [cf. 44 CFR Section 60.6(a)(4)]
 2. Variances shall only be issued upon a showing of good and sufficient cause; a determination that failure to grant the variance would result in exceptional hardship to the applicant; and a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, fraud on or victimization of the public, or conflict with existing laws or ordinances. [cf. 44 CFR Section 60.6(a)(3)]
 3. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. [cf. 44 CFR Section 60.6(a)(5)]
- J. Functionally Dependent Uses: Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use; provided, that the criteria outlined in subsections A through I of this section are met; and provided, that the structure or other development is protected by methods that minimize flood damages during the base flood create no additional threats to public safety. (2006 Code) [cf. 44 CFR Section 60.6(a)(7)]”

Most of the language in Bixby Floodplain Regulations / City Code Section 13-2B-12 is identical or nearly identical to the Floodplain variance provisions of 44 CFR Section 60.2. The Federal variance provisions are referenced above to each City Code section to which they essentially correspond.

In addition to Technical Bulletin 7-93, FEMA has published additional guidance regarding Floodplain variances generally: IS-9 Managing Floodplain Development Through The National Flood Insurance Program (NFIP) (pages 7-44 to 7-54). The relevant pages are attached to this report.

This guidance document provides, on page 7-54, "It is recommended that the variance findings, conditions and authorization be recorded in the county deed records. This provides a means of permanently notifying future or prospective owners about the terms and conditions of the variance." This would be accomplished, if the variance is approved, by specification of the approval, and any conditions attached thereto, in a Decision of Record, which would be recorded in the Land Records of the Tulsa County Clerk. Although the City Code does not require a Decision of Record for a Floodplain variance, as the Zoning Code does for a Zoning Variance, this should be done in this case in satisfaction of FEMA/NFIP guidelines.

Nature of Variance: According to the Applicant's Elevation Certificate, the Base Flood Elevation at the proposed building site is 607.4' above Mean Sea Level (MSL), and the existing ground elevation is MSL + 604.6'. This means that, during a 100-year (1% Annual Chance) flood event, FEMA's modeling indicates flood waters would be nearly 3' deep.

Per the provided site plan, the Applicant proposes to build a 50' X 32' "horse barn" on the subject property. The Applicant has hand-drawn proposed setbacks on the site plan drawing (survey), but upside down in relation to the orientation of the site plan, so Staff is not certain where on the property the building would be located. This would have to be clarified prior to Building Permit issuance.

Per the Application, the building will have a "natural dirt floor." Per other statements made in conversation by the Applicant, the Applicant will agree to have openings along the base of the structure, to allow the free entry of flood waters if and during a flood event. This would effectively negate the need for Compensatory Storage for the building itself, since the flood waters would not be displaced onto other properties. The openings must comply with FEMA Technical Bulletin 1-93 "Openings in Foundation Walls for Buildings Located in Special Flood Hazard Areas" and be approved by the Building Inspector.

However, the new impervious surface constructed (roof, etc.) will cause stormwater runoff. Per City Code and the City Engineer, the new impervious surfaces will require the design and construction of a stormwater detention/retention facility, which stormwater storage area must be out of the 100-year Floodplain, meaning elevated or having its high banks elevated above the BFE. This stormwater storage area will displace 100-year Floodwater storage, and so will require "Compensatory Storage" (compensation for lost flood storage capacity), thus mitigating the displacement of flood waters onto other properties. Compensatory Storage is essentially the removal of fill (typically dirt), from within the same drainage basin, in equal proportion to the new volume which would remain after development. Plans for compensatory storage must be prepared by an engineer and be approved by the City Engineer in the format of an Earth Change Permit [Sections 13-2A-1 (definition of "Development Permit"), 13-2B.8, and 13-2B-9.A].

As it is expected to be designed, the building may be considered "wet-floodproofed," meaning designed to allow the free flow of floodwaters into the building by means of vents or other openings. The structure must be designed to allow this to occur without damaging the structure (Section 13-2C-1.D). With 100-year Flood elevations of roughly 3', the structure is not anticipated to incorporate design modifications for complete inundation. Normally, electrical panels, trip switches or other cutoff devices, outlets, etc. must be elevated above the BFE to the extent possible, and water and sewer systems must be designed to prevent the infiltration of

floodwaters using backflow preventers or other measures as required. However, the Applicant has stated that there will be no water or electric service to the building, and Staff expects there would be no other utility connections either.

FEMA/NFIP and City of Bixby Floodplain Regulations do not allow for "wet-floodproofing." However, FEMA guidance suggests the local community may permit them upon approval of a variance from the requirement to either (1) elevate 1' above BFE, or (2) "[dry-]floodproof" the non-residential structure.

Floodplain variances must comply with 44 CFR 60.6 and Bixby Floodplain Regulations Section 13-2B-12. Floodplain variances specific to "wet-floodproofing" are subject to the certain FEMA/NFIP requirements summarized in FEMA Technical Bulletin 7-93, attached to this report and available at <http://www.fema.gov/library/viewRecord.do?id=1720>, and the same has been provided to the Applicant. 44 CFR 60.6 is also attached to this report:

Also, the Technical Bulletin lists several Planning Considerations and Engineering Considerations. A good application for Floodplain variance will address the relevant issues raised in those sections (e.g. "Warning Time," "Safety and Access," "Inspection and Maintenance Plan," "Flood Emergency Operation Plan," "Foundations," "Electrical System," etc.). By email on the date of this report, Staff has asked the Applicant to respond to these considerations as a part of this application.

FEMA/NFIP rules and the Bixby Floodplain Regulations [Section 13-2C-1.A; 44 CFR 60.6(a)(1)] will require certification of No Rise in BFE upstream or downstream from the project sites.

Here is a summary of the informational requirements needed to justify a Floodplain variance request generally:

- Certification of no rise in BFE / compensatory storage engineering [Section 13-2C-1.A; 44 CFR 60.6(a)(1)]
- Elevation Certificate demonstrating depth of variance requested (attached to this report)
- A variance application/request and project narrative:
 - Application to the Bixby Board of Adjustment, per Section 13-2B-12.A, and requesting placement on its next available agenda.
 - Describing the project in general terms, discussing the need for the proposed structure and other options considered but not selected
 - Demonstration "that the variance is the minimum necessary, considering the flood hazard, to afford relief." [Section 13-2B-12.I.1; 44 CFR 60.6(a)(4)]
 - "Showing of good and sufficient cause; a determination that failure to grant the variance would result in exceptional hardship to the applicant; and a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, fraud on or victimization of the public, or conflict with existing laws or ordinances." [Section 13-2B-12.I.2; 44 CFR 60.6(a)(3)]
 - Demonstration that the building will be "designed or modified, and adequately anchored, to prevent flotation, collapse or lateral movement of the structure

- o resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.” (Section 13-2C-1.C).
- o Demonstration that the building will be “constructed with materials resistant to flood damage.” (Section 13-2C-1.D).
- o Description of the elevation (1’ above BFE otherwise required by Section 13-2C-1.F) or otherwise floodproofing of utilities, specifying the resistance to the “infiltration of floodwaters” if/as applicable
- o Specification that the building will comply with all other applicable Federal and Bixby Floodplain Regulations requirements.
- o Description of how the Planning Considerations and Engineering Considerations of Technical Bulletin 7-93 are addressed, as applicable.
- A variance processing and filing fee in the amount of \$50.00 (Ordinance # 599) (paid; Receipt # 01057660)
- Site plan indicating the locations of critical site features, including all those discussed in the narrative (attached to this report).

No Increase in Flood Levels [cf. Section 13-2B-12.H and 44 CFR Section 60.6(a)(1)]. FEMA/NFIP rules and the Bixby Floodplain Regulations will require certification of No Rise in BFE upstream or downstream from the project site. See the other section in this analysis pertaining to stormwater detention/retention and Compensatory Storage.

Upon the receipt of the Certification of No Rise in the BFE from the Applicant’s engineer and the completion of any required Compensatory Storage, which design may require an approved Earth Change Permit, this prerequisite will have been satisfied.

1/2 Acre Lot Size [cf. Section 13-2B-12.F and 44 CFR Section 60.6(a)(2)]. The subject property contains approximately 7 acres, and so does not meet the Federal requirement for being less than ½ acre in lot area. However, a relevant part of 44 CFR Section 60.6(a) provides the following:

“The Administrator does not set forth absolute criteria for granting variances from the criteria set forth in §§ 60.3, 60.4, and 60.5. The issuance of a variance is for flood plain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance. The community, after examining the applicant’s hardships, shall approve or disapprove a request. While the granting of variances generally is limited to a lot size less than one-half acre (as set forth in paragraph (a)(2) of this section), deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases.” (emphasis added)

It is evident that the ½ acre lot size rule is not absolute, but “as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases.” It follows, then, that the subject property is subject to a higher technical standard than much smaller lots.

It appears that this ½-acre rule is primarily intended to limit flood losses by restricting variances to small, residential lots – those on which a property owner may build a single-family detached dwelling. That is not the case here.

34

Although the guidance most precisely relevant to the current application, Technical Bulletin 7-93 does not appear to mention the ½-acre rule for “wet-floodproofing” related Floodplain variance applications.

Good and Sufficient Cause [cf. Section 13-2B-12.I.2 and 44 CFR Section 60.6(a)(3)]. Although the application form used does not provide a request that the Applicant respond to the *Good and Sufficient Cause* prerequisite, the Applicant’s relevant narrative would appear to be as follows: “It would alleviate the unnecessary hardships I am facing because the City of Bixby wants me to build my barn three Feet above ground because it is in a flood zone, but I know the City of Bixby is about to Lift/Remove the area from a Flood Zone. Also they tell me that I can’t use the dirt from my own land to raise the Barn by three feet and that I also cannot Bring dirt on to my Land from an outside source. So there for I am completely restricted from building a barn to house my horses and agricultural equipment.”

The statement that the City of Bixby told the Applicant he could not “use the dirt from my own land to raise the Barn by three feet” is factually inaccurate. Staff provided this as the third of three (3) options which would comply with the Floodplain Regulations. This option, however, would likely be expensive, as it would require hiring an engineer to demonstrate compliance with the Floodplain Regulations, including Earth Change Permit engineering.

The statement that “the City of Bixby is about to Lift/Remove the area from a Flood Zone” is a reference to the Vision 2025 Haikey Creek Flood Improvement Project, which is designed to remove several hundred acres from the 100-year (1% Annual Chance) Regulatory Floodplain, including in this area per 2006 conceptual plans. The Haikey Creek Project consists of the construction of new channels, the rerouting of existing drainageways into new channel alignments, and the construction of a levee in certain areas. The Haikey Creek Project is awaiting final disposition of an Eminent Domain lawsuit on a right-of-way parcel, FEMA approval of the project, replacement of County bridges along Sectionline roads, and then construction of the rest of the project. Prior to the affected areas being removed from the 100-year Floodplain, As-Built/Record surveying must be conducted to determine the final grade elevations for the project area. The survey data will be attached to a Letter Of Map Revision (LOMR) application, to be completed and submitted to FEMA for its approval. Upon and presuming FEMA approval, the official Floodplain maps will be amended to remove the certain affected areas from the floodplain, and recalculate Base Flood Elevations for the balance of the affected area. The entire process may take some time, and a definitive timeline is not available. Staff has no specific data demonstrating that the subject property will be removed, in whole or in part, from the 100-year Floodplain upon the completion of the project. Staff recognizes that the project scope does not involve elevating the subject property or any other land in the area of the subject property, nor does it indicate any changes to the deep drainage ditch along Mingo Rd.

“Exceptional Hardship” [cf. Section 13-2B-12.I.2 and 44 CFR Section 60.6(a)(3)]. See the Applicant’s narrative under the *Good and Sufficient Cause* prerequisite section of this report, as the same would appear to apply to this prerequisite.

Finding of No Substantial Detriment [cf. Section 13-2B-12.L2 and 44 CFR Section 60.6(a)(3)].

The *No Substantial Detriment* prerequisite for a Floodplain variance requires a "determination that the granting of a variance will not result in ... additional threats to public safety, extraordinary public expense, create nuisances, fraud on or victimization of the public, or conflict with existing laws or ordinances."

Certain statements in the provided narrative would appear to address this prerequisite, as follows:

"All the surrounding properties have Barns, horses, + other livestock. My Property is Not Much Different from My neighbors."

"My Property is Located on Land zoned for Agriculture. I only intend on building a barn to house My three horses + farm equipment. There is No concrete, water or electric (Natural Dirt floor) in the Barn."

"7 acre Land and I would Like to Put a barn on My Land. [A]ll of My surrounding Neighbors have Barns on their Land. My Property is zoned for Agriculture."

See also the discussion in this report pertaining to the Haikey Creek Project, which would be seen in the context of this prerequisite as mitigating detriment from a time and/or flood height standpoint. That is, it is a relative certainty that at some point in the next few years, the Project will be complete, and the subject property may be removed, in relevant part or in whole, or otherwise the Base Flood Elevation may be reduced at the site of the structure. The above caveat still holds that Staff has no specific information on the outcome of this project on the subject property.

Staff does not object to the recognition of the provided and above arguments as sufficient to satisfy this prerequisite in this case, to the extent of placement of the "wet-floodproofed" horse barn in the Special Flood Hazard Area generally.

Staff is concerned, however, for the welfare of the horses that may be living in the horse barn if and during a 100-year (1% Annual Chance) flood event, during which FEMA estimates floodwaters may approach three (3) feet in height at the proposed site of the barn building. Per Wikipedia's entry on "Horse," most non-pony, non-miniature adult horse breeds range in height from 4 2/3 feet to 6 feet. Foals will normally be shorter. FEMA has modeled larger flood events; the 500-Year Floodplain shows areas that have a 0.2% chance of being inundated in any given year (i.e., every year). The 1986 flood event was larger than a "100-year," 1% Annual Chance event, but was not a 500-year (0.2% Annual Chance) event. Base Flood Elevations above the 100-year event are not known for this site. Even if a "heavy or draft horse" at 6' in height, it would appear to frighten the animal if Floodwaters rose up on the horse to a height approaching three (3) feet. Per Wikipedia, horses have a "strong fight-or-flight instinct." The barn may not always shelter only horses; other animals not reaching this height may be contained within the structure during the period of its existence. If the Board approves this application, Staff recommends the Applicant submit a flood event response plan describing how the horses or other animals will be able to seek higher ground to avoid floodwaters approaching three (3) feet if and during such an event. Staff would think an elevated platform with ramp

36

may allow for escape to a higher elevation, in the event of such a flood and if the owner could not get to the property and release the animals before waters begin to enter the barn building. However, this design would appear to require extensive modifications to the stalls. The Applicant may propose other plans to achieve the same result.

Finding of Minimum Necessary [cf. Section 13-2B-12.I.1 and 44 CFR Section 60.6(a)(4)]. The *Minimum Necessary to Alleviate the Unnecessary Hardship* prerequisite for a Floodplain variance requires a finding “that the variance is the minimum necessary, considering the flood hazard, to afford relief.” The application form points to the following relevant part of the provided narrative as a response to the “Minimum Necessary” question:

“It would alleviate the unnecessary hardships I am facing because the City of Bixby wants me to build my barn three Feet above ground because it is in a flood zone, but I know the City of Bixby is about to Lift/Remove the area from a Flood Zone.”

The Applicant is citing the approximately 3’ (3.8’ with the City of Bixby’s 1’ above BFE “freeboard” minimum standard) difference between the existing ground elevation and that required to comply with the Floodplain Regulations.

If the Board finds that the application meets all of the other prerequisites and is to be approved, Staff recommends that the application be found the minimum necessary, based on the location of the proposed barn building and the elevations of the natural grade and the BFE at such site is fixed, and if the building is approved for variance the Board is concomitantly recognizing that the minimum necessary rule has been satisfied. The elevations of the building site and the BFE have been established by a surveyor’s Elevation Certificate, as per FEMA and City of Bixby Floodplain Regulations. Per the Elevation Certificate, the depth of flooding would be 2.8’ at the building site, and with the freeboard, the Floodplain variance would be 3.8’.

Staff Recommendation. The City Planner / Floodplain Administrator does not object to the requested Floodplain variance, provided the minimum floodplain and development regulations are met. If the Board should Approve this application, Staff recommends the Approval be subject to:

1. Submission of a Certification of No Rise in the Base Flood Elevation from the Applicant’s engineer.
2. Submission, City Engineer Approval, and completion of a design for stormwater detention/retention to address the increase in impervious area from site development.
3. Submission, City Engineer approval, and completion of a design for compensatory storage if any issues result from the detention/retention design.
4. Submission of a flood event response plan describing how the horses or other animals will be able to seek higher ground to avoid floodwaters approaching three (3) feet if and during a 100-year (1% Annual Chance) flood event.
5. Submission of documentation adequately demonstrating that the City will have legal access to the subject property for purposes of permit inspections.
6. Submission of an adequate site plan, dimensioned and to scale, clearly indicating the proposed location of the building on the subject property.

7. Submission of design information demonstrating the use of openings along the base of the structure's walls, to allow the free entry of flood waters if and during a flood event, which design for openings must comply with FEMA Technical Bulletin 1-93 "Openings in Foundation Walls for Buildings Located in Special Flood Hazard Areas" and be approved by the Building Inspector.
8. Submission of information demonstrating that the building will be "designed or modified, and adequately anchored, to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy," or using similar language to this effect (Section 13-2C-1.C).
9. Submission of information demonstrating that the building will be "constructed with materials resistant to flood damage," or using similar language to this effect (Section 13-2C-1.D).
10. Submission of a narrative describing how the Planning Considerations and Engineering Considerations of Technical Bulletin 7-93 are addressed, as applicable.
11. All of the Conditions of Approval requiring specific action must be satisfied prior to Building Permit / Floodplain Development Permit issuance.
12. The Applicant acknowledges, upon application of signature to the Decision of Record, that the structure will be permitted to be built with the lowest floor elevation below the Base Flood Elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

RS-3

E 125 ST S

AG

Subject Tract

AG

S-MINGO-RD

E 131st ST S

CS

CS

RS-3

RM-2

CS

CS

FD

OL

39

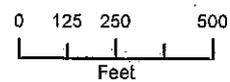


300' Radius



Subject Tract

BBOA-577



01 17-13





City of Bixby Board of Adjustment Application

Applicant: Khaled M Bakri
Address: 4200 West Freeport B.A OK 74012
Telephone: 918-378-3667 Cell Phone: 918-378-3667 Email: MK Bakri@yahoo.com

Property Owner: Khaled Bakri If different from Applicant, does owner consent?
Property Address: 12808 S Mingo
Existing Zoning: Agriculture Existing Use: Farm Use Unit #:
Proposed Use: HORSE STABLE (BARN)

LEGAL DESCRIPTION (If unplatted, attach a survey with legal description or copy of deed):

attached Legal Description.

Does Record Owner consent to the filing of this application? YES NO

If Applicant is other than Owner, indicate interest:

Is subject tract located in the 100 year floodplain? YES NO

Application for: Variance Special Exception Appeal Interpretation

SET OUT BELOW THE SPECIFICS OF YOUR APPLICATION. WHERE APPLICABLE, INDICATE PERTINENT ORDINANCES, PROVISIONS, USES, DISTANCES, DIMENSIONS, ETC. YOU SHOULD ATTACH ANY PLOT PLANS, PHOTOGRAPHS, AND OTHER FACTUAL INFORMATION WHICH WILL ASSIST THE BOARD IN DETERMINING THE MERIT OF YOUR APPLICATION:

APPLICANTS FOR VARIANCE COMPLETE THE FOLLOWING: (attach a longer narrative if desired)

a. Why would the literal enforcement of the Zoning Code create an unnecessary hardship?

b. What makes your property peculiar, extraordinary, or exceptional as compared to other properties in the same district?

All the surrounding Properties have Barns, horses, & other live stock. My Property is not much different from my neighbors.

c. Explain why the granting of a variance will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Zoning Code or Comprehensive Plan.

My Property is located on Land Zoned for Agriculture. I only intend on building a barn to house my three horses & farm equipment. There is NO concrete, water or electric (Natural Dirt floor) in the Barn.

d. Explain why the variance would be the minimum necessary to alleviate the unnecessary hardship.

Please see attached Paper for question D.

40

It would alleviate the unnecessary hardships i am facing
Because the city of Bixby wants me to build my barn three
feet above ground because it is in a flood zone, but I know
the City of Bixby is about to lift/remove the area from
a flood zone. Also they tell me that i cant use the dirt
from my own land to raise the Barn by three feet and that
I also cannot bring dirt on to my land from an outside
source. So there for i am completely restricted from
building a barn to house my horses and agricultural equipment.

City of Bixby Board of Adjustment Application

APPLICANTS FOR A SPECIAL EXCEPTION COMPLETE THE FOLLOWING: (attach a longer narrative if desired)

Describe the Special Exception and the Use Unit for the Special Exception as indicated in the Bixby Zoning Code. Explain why the Special Exception will be in harmony with the spirit and intent of this title, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

7 acre Land and I would like to put a barn on my land
all of my surrounding neighbors have barns on their land.
My Property is zoned for Agriculture.

APPLICANTS MAKING AN APPEAL OF A BUILDING OFFICIAL ACTION COMPLETE THE FOLLOWING: (attach a longer narrative if desired)

Describe the nature of the appeal in detail:

APPLICANTS REQUESTING AN INTERPRETATION OF THE ZONING CODE OR MAP COMPLETE THE FOLLOWING: (attach a longer narrative if desired)

Describe the nature of the request in detail:

BILL ADVERTISING CHARGES TO: _____
 _____ (NAME)
 _____ (ADDRESS) _____ (CITY) _____ (PHONE)

I do hereby certify that the information submitted herein is complete, true and accurate:

Signature: Ken Brown Date: 3-21-13

APPLICANT - DO NOT WRITE BELOW THIS LINE

BBOA-577 Date Received 03/22/2013 Received By Enyart Receipt # 01057660
 Board of Adjustment Date 04/23/2013

1 Sign(s) at \$ 50.00 each = \$ 50.00; Postage \$ 0.00; Total Sign + postage \$ 50.00

FEES:	Variance	Special Exception	Appeal/Interpretation	BASE FEE	ADD.	TOTAL
	\$75.00	or \$100.00	or \$25.00	<u>\$50.00</u>	<u>+</u>	<u>\$50.00</u>

BOA Action: _____ Conditions: _____
 Date: _____ Roll Call: _____
 Staff Rec. _____

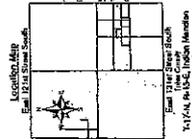
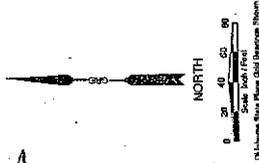
412



P.O. Box 328231
Tulsa, Oklahoma 74132-0231
Phone: (918) 486-1700
Fax: (918) 486-1700
E-mail: info@geobella.com
Created and Auto-corrected 11/24/14
Revised Date: June 28, 2014

Line/Type:
- - - - - Easement
- - - - - Easement
- - - - - Easement

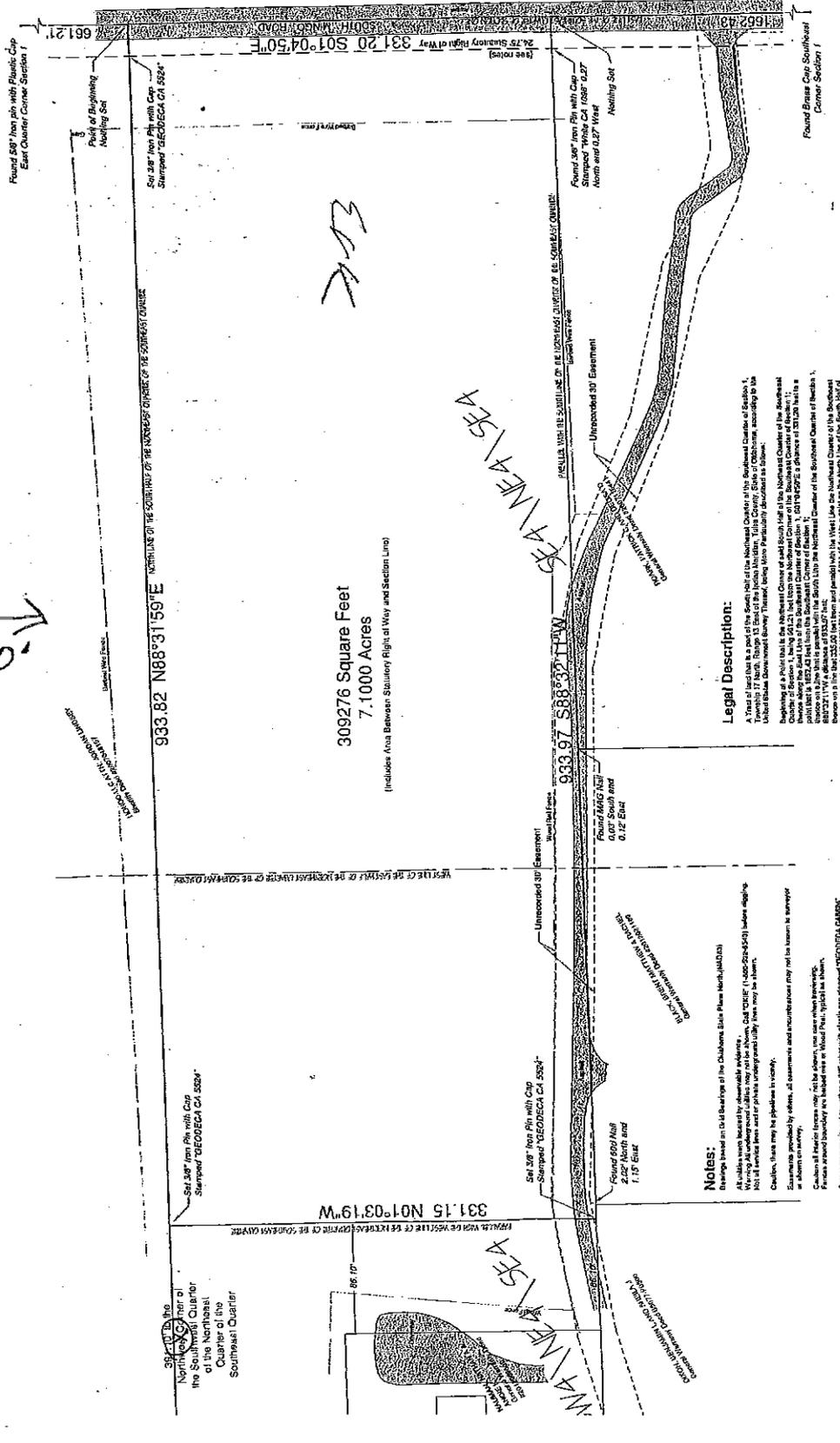
Legend:
- - - - - Easement
- - - - - Easement



Part of the South Half of the Northeast Quarter of the Southeast Quarter of Section 11, T-36N, R-14E, S-11E of the Indian Meridian, Tulsa County, Oklahoma	
Survey Date:	November 10th, 2012
Drawn:	JKM
Checked:	JKM
Reviewed:	JKM
County:	Tulsa
Sheet:	1 of 1
Block:	439

Handwritten notes on the left side of the map:

- 350
- 50' BLDG
- 40'
- 53382



Legal Description:
A tract of land in the Southeast Quarter of the Southeast Quarter of Section 11, Township 36 North, Range 14 East, Section 11, of the Indian Meridian, Tulsa County, Oklahoma, being more particularly described as follows:
Beginning at a Point to be the Northeast Corner of said South Half of the Northeast Quarter of the Southeast Quarter of Section 11, being 0.125 feet from the West line of the Northeast Quarter of Section 11, and running North 88°31'59\"/>



Handwritten notes on the right side of the map:

- Handwritten signature/initials
- 43

ELEVATION CERTIFICATE

OMB No. 1660-0008
Expires March 31, 2012

Important: Read the instructions on pages 1-9.

SECTION A - PROPERTY INFORMATION

A1. Building Owner's Name KHALED M BAKRI		For Insurance Company Use
A2. Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 12808 SOUTH MINGO ROAD		Policy Number
City BIXBY State OK ZIP Code 74008		Company NAIC Number
A3. Property Description (Lot and Block Numbers, Tax Parcel Number, Legal Description, etc.) PART OF NE/4 SE/4 SECTION 1, T-17-N, R-13-E 459' NORTH AND 436.60' WEST OF THE SE CORNER THEREOF		
A4. Building Use (e.g., Residential, Non-Residential, Addition, Accessory, etc.) BARN		
A5. Latitude/Longitude: Lat. N35d58.6969' Long. W95d52.1717'		Horizontal Datum: <input type="checkbox"/> NAD 1927 <input checked="" type="checkbox"/> NAD 1983
A6. Attach at least 2 photographs of the building if the Certificate is being used to obtain flood insurance.		
A7. Building Diagram Number 1-A		
A8. For a building with a crawlspace or enclosure(s):		A9. For a building with an attached garage:
a) Square footage of crawlspace or enclosure(s) N/A sq ft		a) Square footage of attached garage N/A sq ft
b) No. of permanent flood openings in the crawlspace or enclosure(s) within 1.0 foot above adjacent grade N/A		b) No. of permanent flood openings in the attached garage within 1.0 foot above adjacent grade N/A
c) Total net area of flood openings in A8.b N/A sq in		c) Total net area of flood openings in A9.b N/A sq in
d) Engineered flood openings? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		d) Engineered flood openings? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

SECTION B - FLOOD INSURANCE RATE MAP (FIRM) INFORMATION

B1. NFIP Community Name & Community Number 400207		B2. County Name TULSA		B3. State OKLAHOMA	
B4. Map/Panel Number 40143C0630	B5. Suffix H	B6. FIRM Index Date 9/22/99	B7. FIRM Panel Effective/Revised Date 12/21/2000	B8. Flood Zone(s) A	B9. Base Flood Elevation(s) (Zone AO, use base flood depth) 607.4
B10. Indicate the source of the Base Flood Elevation (BFE) data or base flood depth entered in Item B9. <input checked="" type="checkbox"/> FIS Profile <input type="checkbox"/> FIRM <input type="checkbox"/> Community Determined <input type="checkbox"/> Other (Describe) _____					
B11. Indicate elevation datum used for BFE in Item B9: <input type="checkbox"/> NGVD 1929 <input checked="" type="checkbox"/> NAVD 1988 <input type="checkbox"/> Other (Describe) _____					
B12. Is the building located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Designation Date N/A <input type="checkbox"/> CBRS <input type="checkbox"/> OPA					

SECTION C - BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)

C1. Building elevations are based on: Construction Drawings* Building Under Construction* Finished Construction
*A new Elevation Certificate will be required when construction of the building is complete.

C2. Elevations - Zones A1-A30, AE, AH, A (with BFE), VE, V1-V30, V (with BFE), AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO. Complete Items C2.a-h below according to the building diagram specified in Item A7. Use the same datum as the BFE.
Benchmark Utilized **ADS BA11** Vertical Datum **NAVD88**
Conversion/Comments _____

Check the measurement used.

a) Top of bottom floor (including basement, crawlspace, or enclosure floor) 604.6	<input checked="" type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)
b) Top of the next higher floor NONE	<input type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)
c) Bottom of the lowest horizontal structural member (V Zones only) N/A	<input type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)
d) Attached garage (top of slab) NONE	<input type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)
e) Lowest elevation of machinery or equipment servicing the building (Describe type of equipment and location in Comments)	<input type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)
f) Lowest adjacent (finished) grade next to building (LAG) 604.6	<input checked="" type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)
g) Highest adjacent (finished) grade next to building (HAG) 604.6	<input checked="" type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)
h) Lowest adjacent grade at lowest elevation of deck or stairs, including structural support NONE	<input type="checkbox"/> feet <input type="checkbox"/> meters (Puerto Rico only)

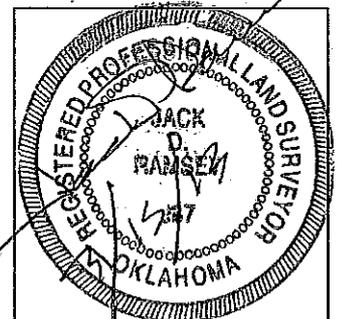
SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION

This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information. I certify that the information on this Certificate represents my best efforts to interpret the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.

Check here if comments are provided on back of form. Were latitude and longitude in Section A provided by a licensed land surveyor? Yes No

44

Certifier's Name JACK D RAMSEY	License Number OK LS#387
Title PROFESSIONAL LAND SURVEYOR	Company Name RAMSEY SURVEYING SERVICE
Address P.O. BOX 366	City BIXBY State OK ZIP Code 74008
Signature 	Date 3/15/13 Telephone 918 740 1124



IMPORTANT: In these spaces, copy the corresponding information from Section A.	For Insurance Company Use:
Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 12808 SOUTH MINGO ROAD	Policy Number
City BIXBY State OK ZIP Code 74008	Company NAIC Number

SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION (CONTINUED)

Copy both sides of this Elevation Certificate for (1) community official, (2) insurance agent/company, and (3) building owner.

Comments BENCH MARK ADS#BA11 IS A PUBLISHED ELEVATION DETERMINED BY AERIAL DATA SERVICE OF TULSA, OKLAHOMA FROM WHICH FEMA FLOOD INSURANCE RATE MAPS WERE DEVELOPED.
ABOVE SITE IS TO BE A HORSE BARN WITH A FLOW-THRU DESIGN

Signature _____ Date 3/15/13 Check here if attachments

SECTION E - BUILDING ELEVATION INFORMATION (SURVEY NOT REQUIRED) FOR ZONE AO AND ZONE A (WITHOUT BFE)

For Zones AO and A (without BFE), complete Items E1-E5. If the Certificate is intended to support a LOMA or LOMR-F request, complete Sections A, B, and C. For Items E1-E4, use natural grade, if available. Check the measurement used. In Puerto Rico only, enter meters.

E1. Provide elevation information for the following and check the appropriate boxes to show whether the elevation is above or below the highest adjacent grade (HAG) and the lowest adjacent grade (LAG).
 a) Top of bottom floor (including basement, crawlspace, or enclosure) is _____ feet meters above or below the HAG.
 b) Top of bottom floor (including basement, crawlspace, or enclosure) is _____ feet meters above or below the LAG.

E2. For Building Diagrams 6-9 with permanent flood openings provided in Section A Items 8 and/or 9 (see pages 8-9 of Instructions), the next higher floor (elevation C2.b in the diagrams) of the building is _____ feet meters above or below the HAG.

E3. Attached garage (top of slab) is _____ feet meters above or below the HAG.

E4. Top of platform of machinery and/or equipment servicing the building is _____ feet meters above or below the HAG.

E5. Zone AO only: If no flood depth number is available, is the top of the bottom floor elevated in accordance with the community's floodplain management ordinance? Yes No Unknown. The local official must certify this information in Section G.

SECTION F - PROPERTY OWNER (OR OWNER'S REPRESENTATIVE) CERTIFICATION

The property owner or owner's authorized representative who completes Sections A, B, and E for Zone A (without a FEMA-issued or community-issued BFE) or Zone AO must sign here. *The statements in Sections A, B, and E are correct to the best of my knowledge.*

Property Owner's or Owner's Authorized Representative's Name _____

Address _____ City _____ State _____ ZIP Code _____

Signature _____ Date _____ Telephone _____

Comments _____

Check here if attachments

SECTION G - COMMUNITY INFORMATION (OPTIONAL)

The local official who is authorized by law or ordinance to administer the community's floodplain management ordinance can complete Sections A, B, C (or E), and G of this Elevation Certificate. Complete the applicable item(s) and sign below. Check the measurement used in Items G8 and G9.

G1. The information in Section C was taken from other documentation that has been signed and sealed by a licensed surveyor, engineer, or architect who is authorized by law to certify elevation information. (Indicate the source and date of the elevation data in the Comments area below.)

G2. A community official completed Section E for a building located in Zone A (without a FEMA-issued or community-issued BFE) or Zone AO.

G3. The following information (Items G4-G9) is provided for community floodplain management purposes.

G4. Permit Number	G5. Date Permit Issued	G6. Date Certificate Of Compliance/Occupancy Issued
-------------------	------------------------	---

G7. This permit has been issued for: New Construction Substantial Improvement

G8. Elevation of as-built lowest floor (including basement) of the building: _____ feet meters (PR) Datum _____

G9. BFE or (in Zone AO) depth of flooding at the building site: _____ feet meters (PR) Datum _____

G10. Community's design flood elevation _____ feet meters (PR) Datum _____

Local Official's Name _____ Title _____

Community Name _____ Telephone _____

Signature _____ Date _____

Comments _____

45

Check here if attachments

Erik Enyart

From: Erik Enyart
Sent: Thursday, April 18, 2013 12:01 PM
To: 'mkbakri@yahoo.com'
Cc: Jared Cottle; Bea Aamodt; Patrick Boulden; 'Donna'
Subject: FW: 128th and Mingo
Attachments: FEMA Technical Bulletin 7-93 - Wet Floodproofing Requirements for Structures Located in Special Flood Hazard Areas.pdf; Staff Report – BBOA-577 – Khalid Bakri – DRAFT copy drafted 04-18-13.pdf; FEMA Technical Bulletin 1-93 - Openings in Foundation Walls for Buildings Located in Special Flood Hazard Areas.pdf; 44 CFR 60.6 - CFR-2010-title44-vol1-sec60-6.pdf

Khaled Bakri:

The draft report for Tuesday's Special Meeting of the Board of Adjustment is attached. Please review and take note of the recommended Conditions of Approval listed at the end of the report. Please be prepared to provide the information requested or responses to the items as each may call for.

Other staff members copied here for their review and edits as may be necessary.

Also attached are the FEMA documents specified as attachments to the staff report or otherwise cited as requirements for a Building Permit / Floodplain Development Permit.

Please plan to attend Tuesday's meeting to represent the application, bring information needed, and respond to any questions the Board of Adjustment may have.

Hopefully this information is helpful. Please call or email if you have any questions or need additional information.

Erik Enyart

From: Erik Enyart
Sent: Wednesday, March 20, 2013 4:50 PM
To: mkbakri@yahoo.com
Subject: FW: 128th and Mingo

Khaled Bakri:

Per your request, I am attaching the Board of Adjustment application. To request the Board of Adjustment approve a variance from the Floodplain Regulations, you would need to complete the application and submit it to the City by April 05, 2013, to be placed on the May 06, 2013 Board of Adjustment meeting agenda.

The application review fee is \$50.00, payable at the Water Billing Desk in City Hall, 116 W. Needles Ave. You may leave the application there for me, and I will retrieve it from my mailbox there, or you may bring it and a copy of your receipt to my office in the Dawes Building. A public notice will be prepared and sent to the South County Leader for publication, and the invoice for the publication will be sent to you for payment. You must pay this as a part of your application, prior to the hearing date.

I have also attached the FEMA technical bulletin pertaining to "Wet-Floodproofing," as it may be related to what you are requesting.

Hopefully this information is helpful. Please call or email if you have any questions or need additional information.

Erik Enyart

From: Erik Enyart
Sent: Wednesday, March 20, 2013 3:11 PM
To: 'mkbakri@yahoo.com'
Subject: FW: 128th and Mingo

Khaled Bakri:

Good to meet you today.

Attached is the FEMA technical bulletin describing standards for an elevated, flow-through foundation, one of the three options I provided you on the note for compliance with the Floodplain Regulations.

Hopefully this information is helpful. Please call or email if you have any questions or need additional information.

Erik Enyart

From: Erik Enyart [<mailto:eenyart@bixby.com>]
Sent: Tuesday, December 18, 2012 3:33 PM
To: 'mkbakri@yahoo.com'
Subject: FW: 128th and Mingo

Khaled Bakri
(918) 378-3667

Khaled Bakri:

Per your request, the address assignment letter is attached.

Hopefully this information is helpful. Please call or email if you have any questions or need additional information.

Erik Enyart

From: Erik Enyart [<mailto:eenyart@bixby.com>]
Sent: Wednesday, February 29, 2012 8:50 AM
To: mkbakri@yahoo.com
Subject: FW: 128th and Mingo

Khaled Bakri
(918) 378-3667

Khaled Bakri:

Per your request, I am forwarding you the results of the research the City of Bixby did the last time there was an inquiry on one of the properties in that informal development west of Mingo Rd. at the 12800-block south thereof. Not all of the following would be applicable to your situation; but it should enable you to ask the right questions as you do your due diligence.

Specifically, you indicated you are interested in purchasing the 3.8-acre Roark property fronting on Mingo Rd. That property would not require a Variance in order to build a house, as it has the minimum 200' of frontage on a public street. Secondly, the water service matter should be simpler, as the property owner can directly tap the City's waterline on the east side of Mingo Rd., rather than having to cross through intervening properties.

Hopefully this information is helpful. Please call or email if you have any questions or need additional information.

All of the same caveats included in the forwarded email apply.

Erik Enyart

From: Erik Enyart [mailto:eenyart@bixby.com]
Sent: Wednesday, September 28, 2011 11:19 AM
To: 'Tracy Todd'
Subject: RE: 128th and Mingo

Tracy Todd:

There is a private, east-west drive that connects several properties at about the 12800-block of S. Mingo Rd. Others have inquired about this property. The Campbell house is addressed 12826 S. Mingo Rd., as per the address you provided.

It will be exceptionally difficult, but not possible to build a house on the currently vacant tracts in this area. Here is part of what I informed them:

"[T]hese properties are relatively exceptional, and there are several issues which would make it difficult to construct a house in satisfaction of applicable laws and regulations. As there are several City of Bixby departments who have different pieces of the puzzle, I offered to coordinate with the other departments and return to you a more comprehensive list of such issues...., such as (1) improper connections to public water, (2) lack of access to the public water line on Mingo Rd. absent several easements from intervening parcels and/or the cooperative effort to design, achieve Oklahoma Department of Environmental Quality (ODEQ) and City approval, and build a public water line, (3) the floodplain development and stormwater issues (properly engineered and built compensatory storage and stormwater drainage/detention plans), (4) the requirement of a Zoning Variance from frontage and bulk and area requirements, and (5) any remedial actions necessary based on my research of the subdivision situation for this area. After concluding the research, in no particular order, here is a more complete response (however, other considerations from the City of Bixby's standpoint may have been inadvertently omitted. Please avail yourself of the counsel of proper professionals who may advise you on what issues to look out for when doing your due diligence before buying real estate):

Subdivision Regulations. The area may have been informally known as "Pecan Trail Estates," per a 02/21/2001 letter from then Assistant City Manager Mike Jones to all of the property owners within it.

48

However, I find it more likely that it may have gone by another name. On August 21, 2000, the Planning Commission conditionally approved a Preliminary Plat of "Pecan Grove Estates," a subdivision of 14 lots on approximately 36.18 acres (evidently that part of the S/2 N/2 NE/4 Section 01, T17N, R13E lying east of the Fry Creek # 1 right-of-way). The Sketch Plat by this name was reviewed and discussed only on July 17, 2000. The only records of this I found in the Planning Commission Minutes. I have found no copy of that plat and no case file. It appears the subdivision did not proceed beyond Planning Commission approval of the Preliminary Plat. The 02/21/2001 letter states "the submittal was denied by the City Council because it did not comply with City ordinances and regulations." A copy of this letter will be made available to you if required.

At 14 lots, the lots would be roughly the size of the ones that have been created. It would have, evidently, incorporated several tracts of land already in existence as of the plat's review in 2000. The "subdivision" appears to have been created by a series of deeds parceling out tracts of approximately 2.51 acres and larger. The first one appears to have been a deed for 6 acres from Arthur & Kathryn Morris to Benjamin and Sheila Dixon recorded 12/08/1994 (Book 5677 Page 500). Today this is the Patrick Roark "flag lot" of approximately 3 acres at 12830 S. Mingo Rd. and the Dixon vacant tract of approximately 3 acres immediately to the west. Another parcel (not necessarily the second in the area) was per a deed for 2.5 acres from Dixon to Bill & Angela Blankenship, recorded 05/22/1998 (Book 6054 Page 2286), now addressed 12832 S. Mingo Rd. The other tracts in this area appear to have been deeded around the late 1990s / early 2000s. According to the Tulsa County Assessor, Hondo, LLC c/o Jordan Lindsey of 5301 Englenook Dr., Allen, TX owns the balance of the 36 acres not parceled off, and another vacant, unplatted 36-acre tract lying to the north of that.

None of the deeds I have copies of have Lot-Split approval certifications on them. There were two (consolidated?) Lot-Split applications, BL-189 and BL-190 (Benjamin Dixon as Applicant in both cases), conditionally approved 03/17/1995. However, the land division as approved was not ultimately realized - lot line patterns are now different than proposed. In all of this acreage, there was only one (1) other Lot-Split application, BL-278 (Benjamin Dixon), which proposed the creation of the Patrick Roark "flag lot" of approximately 3 acres at 12830 S. Mingo Rd. and the Dixon vacant tract of approximately 3 acres immediately to the west. It was administratively Approved by Staff March 14, 2003. There is no record of Planning Commission approval or consideration of this case between March 17, 2003 (at which meeting BL-277 was considered) and November 17, 2003 (at which the next Planning Commission-considered Lot-Split was approved, BL-282).

Lot-Split approval may not have been required, as the Subdivision Regulations have jurisdiction over "subdivisions," defined in Section 12-1-5 (view online at http://www.sterlingcodifiers.com/codebook/index.php?book_id=590) as

""SUBDIVISION:

A. The division of a parcel of land shown as a unit or contiguous units on the last proceeding tax roll into five (5) or more lots or parcels, any one of which contains two and one-half (2^{1/2}) acres or less, for the purpose of transfer of ownership or building development;

..." (emphasis added)

And "Lot-Splits," defined in Section 12-1-5 as:

"LOT SPLIT: A transfer or agreement or negotiation to transfer any tract of land of two and one-half (2^{1/2}) acres or less where such tract of land was not shown of record in the office of the county clerk and does not comprise an entire lot of record. The lot split must meet minimum requirements for bulk and area in the particular zoning district." (emphasis added)

The Tulsa County Assessor's records indicate that they are each 2.51 acres or larger, and based on my calculations, all of them are at least 2.5097 acres, with one exception. By deed recorded 02/06/2004 (Book 7228 Page 2399), Hondo, LLC deeded to Joseph & Nancy Warren a 30' wide strip of land lying east of the Warren property of 2.51 acres (recorded 08/09/2000 Book 6400 Page 2216). It would appear to have been part of the overall leftover tract until it was deeded separately in 2004. There is a title curative statute that essentially states that, even if the deed to a parcel of land does not bear the approval certificate of the Planning Commission having jurisdiction, after it has been filed of record for a period of five (5) years, it is cured of that title defect. That does not, however, relieve the property owner from compliance with City of Bixby regulations, as far as I am aware.

If you were to purchase both tracts and have the 2.51-acre tract described on the same deed as the 30'-wide strip tract, preferably using a combined legal description or a deed restriction declaring the combination of the tracts and restrictions from separate conveyance, that conveyance would not be subject to a Lot-Split approval requirement, nor would it require any form of subdivision approval pursuant to the Subdivision Regulations. If you only purchased the 2.51-acre tract and not the 30' tract, that 30'-wide Warren tract would have nothing to do with the 2.51-acre tract. The requirement for compliance with the Subdivision Regulations rests with the owner of the 30'-wide tract.

Floodplain. The property is in the 100-year (1% Annual Chance) Regulatory Floodplain per the FEMA Floodplain maps and cannot be built upon without (1) elevating the structure to 1 foot above BFE, as evidenced by an Elevation Certificate, (2) providing compensatory storage, and (3) complying with stormwater requirements of Title 13. This will require your hire of a qualified engineer to produce calculations and plans in satisfaction of floodplain and stormwater regulations.

Zoning Code. The Warren proeprt(ies) I understand you are considering purchasing are zoned AG Agricultural District, which zoning would normally allow the construction of one (1) single-family dwelling per lot of record. However, the proert(ies) do not, separately or together, comply with the Zoning Code. Zoning Code Section 11-8-4 would prohibit the construction of a house on this property as it does not have a minimum of 30' of frontage on a public street or dedicated right-of-way, as required by this section. The property owner cannot build a house on this lot absent a Variance from Zoning Code Section 11-8-4 and the bulk and area requirements of the AG district, which requirements implicitly require street frontage.

Please advise if you or the property owner need a Variance application form and instructions.

There were three (4) Board of Adjustment applications within that part of the S/2 N/2 NE/4 Section 01, T17N, R13E lying east of the Fry Creek # 1 right-of-way. BBOA-287, BBOA-297, and BBOA-337 were all requests for temporary approval of mobile / manufactured homes during the period that certain homes in this area were constructed. BBOA-474 was a request for Special Exception for a wind energy conservation/conversion systems to be installed on the roof line of the dwelling at 12830 S. Mingo Rd. None of these applications have any bearing on the above frontage situation for the Warren properties.

City of Bixby Water Service. I understand that the houses in this area of the S/2 N/2 NE/4 Section 01, T17N, R13E lying east of the Fry Creek # 1 right-of-way are all connected, with one recent exception, to the public water line main along Mingo Rd. using a singular water tap / water meter. I understand that this is not to code and is problematic from a water meter accuracy standpoint. No further service will be permitted from this private service line extension. In order to get City of Bixby water service, it will be necessary to (1) extend a new private service line through all of the intervening properties and tap onto the public water line on Mingo Rd., securing all required private waterline easements along the way, or (2) cooperating with the other property owners in this development area to engineer a new public waterline, grant a restricted waterline easement to the City of Bixby, seek and receive ODEQ and City of Bixby approval for the new public waterline, construct it, and have it pass inspections and be accepted. Thereupon, all property owners in this area may tap directly to the

new public waterline. The property owners would be responsible for hiring a qualified professional engineer to design and coordinate the project, and for all costs related to building the waterline.

Sanitary Sewer. City of Bixby public sanitary sewer is not available for this property. An individual onsite sewage-disposal system would be subject to ODEQ approval, inspections, and permitting.

Access. I do not know what easement(s) may be in effect for the private drive connecting this property to Mingo Rd., or what rights of access the owner or assigns of the Warren properties may have to it. The existence and access to any private roadway easements would be something the prospective buyer would want to look into and satisfy themselves of during their due diligence. Further, any Zoning Variance consideration should include a review of testimony from emergency responders on the adequacy of access to / from the property and the nearest public road, Mingo Rd.

Hopefully this information is helpful. Please call or email if you have any questions or need additional information.

Copy: Listing agent Ron Sumner
City Manager Doug Enevoldsen
City Attorney Patrick Boulden, esq.
Community Development Coordinator Donna Crawford, CFM
City Engineer Jared Cottle, PE
Public Works Director Bea Aamodt, PE
Building Inspector Bill May”

As for the private drive ownership and maintenance responsibilities, see the above section entitled “Access.”

Please advise if you have any questions about the above or any property specifically.

Erik Enyart, AICP, City Planner
City of Bixby, PO Box 70
Bixby, OK 74008
Ph. (918) 366-0427
Fax (918) 366-4416
eenyart@bixby.com
www.bixby.com

From: Tracy Todd [<mailto:tracy.todd@jtpower.net>]
Sent: Monday, September 26, 2011 12:00 PM
To: eenyart@bixby.com
Subject: 128th and Mingo

Dear Sir,

We are looking at buying a property at 128th and Mingo and we are trying to find out who own the bridge that comes off Mingo into the housing area. There are only five properties on the land there and we believe they are responsible for the road. Also we are looking for information on the zoning or development for this area as we have been told that no more house can be built there. Any help or direction on where to find this information would be much appreciated. The actual address of the property is 12826 S Mingo Rd.
Thank you for your time.

Tracy Todd

51

(918) 812-1230
tracy.todd@jtpower.net

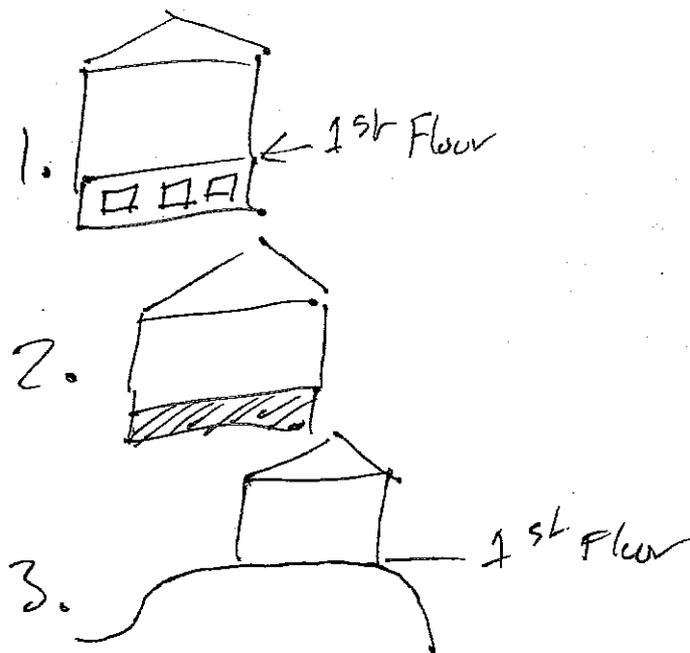
52

Agricultural Barn Building

3 options:

1. Flow-through foundation, elevate 1st floor 1' above 100-year BFE
2. Floodproof - air tight below BFE
3. Elevate ground to 1' above BFE
Requires Engineer + Compensatory Storage

BFE: Base Flood Elevation



gave this to Khaleed Bakri 03/20/2013
explained all in detail.
see email on this date. 53



CITY OF BIXBY
P.O. Box 70
116 W. Needles Ave.
Bixby, OK 74008
(918) 366-4430
(918) 366-6373 (fax)

STAFF REPORT

To: Bixby Board of Adjustment
From: Erik Enyart, AICP, City Planner *EE*
Date: Friday, April 19, 2013
RE: Report and Recommendations for:
BBOA-578 – Daniel & Leanne Martin

LOCATION: – Part of the W/2 NE/4 of Section 06, T17N, R14E
– 12305 S. 109th E. Ave.

LOT SIZE: 3.3 acres, more or less

ZONING: AG Agricultural District

REQUEST: (1) A Variance from the minimum public street frontage standard of Zoning Code Section 11-8-4, and (2) a Variance from certain other bulk and area standards of the AG Zoning District as per Zoning Code Section 11-7A-4 Table 3, all to allow for the construction of a building addition to an existing house on an existing lot of record in the AG Agricultural District

SURROUNDING ZONING AND LAND USE: RS-1 & AG; Rural residential to the north along 109th E. Ave. and along 121st St. S. zoned AG and RS-1; agricultural to the west in *Lon-Jan-Addition* and surrounding properties zoned RS-1 and AG, vacant, wooded, and agricultural land to the south and east.

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

PREVIOUS/RELATED CASES: (not a complete list).

BZ-272 – Scott Sherrill – Request for rezoning from AG to RS-1 for the N. approximately 2.5 acres of an original tract containing approximately 19 acres, which included subject property – PC Recommended Approval 05/21/2001 and City Council Approved 06/11/2001 (Ord. # 826).

BL-267 – Scott Sherrill – Request for Lot-Split approval to separate into two (2) tracts the N. approximately 2.5 acres of an original tract containing approximately 19 acres, which included subject property – Appears to have been approved by Staff 07/12/2002 – No record of PC consideration between June and December, 2002.

RELEVANT AREA CASE HISTORY: (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 located north of subject property at or about 10617 E. 121st St. S. – BOA Conditionally Approved 06/10/1980.

BZ-136 – Ted R. Burke – request for rezoning from AG to CS for approximately 40 acres (the NE/4 NE/4; includes subject property) abutting subject property to the east for commercial purposes – Withdrawn by Applicant 03/22/1983 per case notes.

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 located north of subject property at or about 10617 E. 121st St. S. – 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 (5 acres) located north of subject property at or about 10617 E. 121st St. S. – BOA Approved 10/11/1983.

BBOA-274 – Dr. Cecil Wells Jr. – Request for Variance from the minimum area standard in the AG district to allow for a Lot-Split (BL-176) of an approximately 2.6-acre tract into two (2) tracts of approximately 0.9 acre and 1.7 acres to the west of subject property at 9740 and 10288 E. 121st St. S. – Approved by BOA 02/07/1994.

BBOA-275 – Dr. Cecil Wells Jr. – Request for Variance from the minimum frontage standard in the AG district to allow for a Lot-Split (BL-176) of an approximately 2.6-acre tract into two (2) tracts of approximately 0.9 acre and 1.7 acres to the west of subject property at 9740 and 10288 E. 121st St. S. – Approved by BOA 02/07/1994.

BL-176 – Dr. Cecil Wells Jr. – Request for Lot-Split of an approximately 2.6-acre tract into two (2) tracts of approximately 0.9 acre and 1.7 acres to the west of subject property at 9740 and 10288 E. 121st St. S. – Approved by PC 03/02/1994.

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, property located to the north of subject property at 10617 E. 121st St. S. – BOA Approved 01/04/1994.

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) to the north of subject property at 10101/10101-B E. 121st St. S. (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. 121st St. S.) – 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 McLearan – 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) to the north of subject property at 10101/10101-B E. 121st St. S. (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. 121st St. S.) – PC Approved 03/02/1994.

BL-269 – Scott Sherrill – Request for Lot-Split approval to create two (2) lots along the east of 109th E. Ave. just north of subject property – PC Approved 08/19/2002.

BL-307 – Scott Sherrill – Request for Lot-Split approval to create two (2) lots along the east of 109th E. Ave. just north of subject property – PC Approved 09/23/2004.

BL-360 – Chisholm Ranch, LLC for Patricia Wells Trust – Request for Lot-Split approval for a small land trade for property to the west of subject property at 9740 and 10288 E. 121st St. S. – PC Conditionally Approved 09/15/2008.

BL-361 – Chisholm Ranch, LLC for the Juniper Hill Farm, Inc. – Request for Lot-Split approval for a small land trade for property to the west of subject property at 9740 and 10288 E. 121st St. S. – PC Conditionally Approved 09/15/2008.

BBOA-520 – Denny Redmon for Bobby Gillean – Request for Special Exception per Zoning Code Section 11-9-4.C.1.c to allow a Use Unit 4 cellular communications tower facility to be located closer than ½ of a mile from an existing tower, on a 34-acre tract in an AG Agricultural District located to the east of the subject property in part of Government Lot 1, (NE/4 NE/4) of Section 06, T17N, R14E, addressed 11198 E. 121st St. S. – BOA Denied 05/03/2010 – Appealed (Case No. 10-CV-349-CVE-PJC) and found in favor of Plaintiff U.S. Cellular in late 2010 per City Attorney.

BBOA-560 – Dr. C. G. Wells Jr. for Marcia D. Wells – Request for Variance from (1) Zoning Code Section 11-8-5 to be permitted to maintain two (2) dwellings on a singular tract of land, (2) the 40' rear yard setback and 2.2 acre minimum land area per dwelling unit standards of Zoning Code Section 11-7A-4 Table 3, and, (3) any other Zoning Code requirement preventing the placement and maintenance of a Use Unit 9 single-wide manufactured home on a lot containing a Use Unit 6 single family dwelling and the Juniper Hill Farm a Use Unit 15 nursery business in the AG Agricultural District, all for property to the west of subject property at 9740 and 10288 E. 121st St. S. – Conditionally Approved by BOA 06/04/2012.

BBOA-561 – Dr. C. G. Wells Jr. for Marcia D. Wells – Request for Special Exception per Zoning Code Section 11-7A-2 Table 1 to allow an existing Use Unit 9 single-wide manufactured home in the AG Agricultural District, all for property to the west of subject property at 9740 and 10288 E. 121st St. S. – Conditionally Approved by BOA 07/02/2012.

BACKGROUND INFORMATION:

ANALYSIS:

Subject Property Conditions. The subject property is an unplatted tract of approximately 3.3 acres, addressed 12305 S. 109th E. Ave., and Zoned AG. The parcel contains an existing house

located toward its southeast corner, a large accessory building about its northwest corner, and miscellaneous smaller structures about the property. Per the Applicant and the Tulsa County Assessor's records, the house was constructed in 1970. Its driveway continues south from the subject property to another acreage tract the Applicant owns. The subject property was a certain "middle" part of a former approximately 19-acre tract of land. To the south are approximately 14 acres that appear to have been separated from the subject property at some point. Most of the 14 acres also belong to the Applicant, but a certain southeast portion of approximately 1.6 acres the City of Bixby recently acquired as right-of-way for the Haikey Creek Flood Improvement Project.

In or around 2001/2002, a previous owner of the former 19 acres rezoned the northerly approximately 2.5 acres thereof and separated it into two (2) smaller tracts, on which new homes have been since constructed. Those two (2) homes, and the four (4) tracts on the east side of 109th E. Ave., may be informally known as "Haikey Creek Farm/s," an unplatted subdivision. Though not a part of the original 19-acre tract, there are four (4) tracts on the east side of 109th E. Ave. that were also created by Lot-Splits in 2002 and 2004. One (1) of those lots appears to have had an older house on it, and the other three (3) lots had new homes constructed on them around the mid-2000s.

Staff is not certain when the 109th E. Ave. was assigned this street name. It appears to be associated with a 20'-wide "Roadway Easement" dedicated "to the Public for roadway purposes" and recorded January 10, 1966 on Book 3666 Page 416 of the records of the Tulsa County Clerk. This 1966 dedication presumably predated the City of Bixby's annexation of this area, and may suggest that, if recognized as a Public road, may have been a County road prior to annexation. Per the Applicant, the City of Bixby paved the street "in the past 10 years." Per a site inspection March 28, 2013, S. 109th E. Ave. has a street name sign bearing this name, green in color indicating a standard Public street. Since Staff's inquiry to the Public Works Director by email on March 25, 2013, the Public Works Director has not disclaimed it as a City street. The subject property has 20' of frontage on the south-dead end of the easement associated with 109th E. Ave., and so has 20' of Public street frontage.

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:

1. Unnecessary Hardship.
2. Peculiarity, Extraordinary, or Exceptional Conditions or Circumstances.
3. Finding of No Substantial Detriment or Impairment.
4. Variance would be Minimum Necessary.

Nature of Variance. The Applicant has submitted a Building Permit application seeking to build an addition to the north/side of the existing house. The building addition includes "a garage and utility room," per the application form.

Zoning Code Section 11-8-4 requires that all lots used for residential purposes have a minimum of 30' of street frontage:

“11-8-4: STREET FRONTAGE REQUIRED:

No lot shall contain any building used in whole or in part for residential purposes unless such lot has a minimum of thirty feet (30') of frontage on a public street or dedicated right of way, except as provided for a substandard lot of record, a lot dedicated within an approved planned unit development, and a lot within an approved townhouse development. (Ord. 272, 4-2-1974)”

The subject property has only 20' of frontage on the south dead-end of 109th E. Ave., and so does not meet this standard.

The subject property appears to meet the other minimum bulk and area standards for the AG district, including the 2.0-acre minimum lot area and the 2.2-acre minimum land area, and the house appears to meet the required Zoning setbacks.

Zoning Code Section 11-8-1 restricts the issuance of building permits for nonconforming lots.

Therefore, the Applicant is requesting a (1) A Variance from the minimum public street frontage standard of Zoning Code Section 11-8-4, and (2) a Variance from certain other bulk and area standards of the AG Zoning District as per Zoning Code Section 11-7A-4 Table 3, all to allow for the construction of a house on an existing lot of record in the AG Agricultural District.

Detailed Analysis. The Applicant has provided several arguments explaining how the proposed Variance would meet the tests and standards for Variance. Staff believes that these arguments are sound and reasonable, and has provided further refinements and additional arguments in the following paragraphs.

The former 19-acre tract had 143.46' of frontage on 121st St. S. prior to the separation of its northerly approximately 2.5 acres as associated with Lot-Split application BL-267 in 2002. It also had 770.4' of frontage along the west side of S. 109th E. Ave. and the 20' of frontage on the south dead-end of that street as it presently maintains. It appears that the Lot-Split itself created three (3) tracts, the third being the subject property by default. Thus, the subject property appears to have fallen out of compliance with the 30' frontage requirement in 2002.

At 20', the frontage is just 10' shy of the 30' minimum required by the Zoning Code.

One of the fundamental purposes for having and administering Subdivision Regulations is to ensure that all lots created comply with the Zoning Code and have unrestricted, direct access to a public street or dedicated right-of-way. The Zoning Code requires that all lots approved as required by the Subdivision Regulations comply with the Zoning Code standards.

Per Zoning Code Section 11-8-4, the minimum frontage required for a house 30'. Per BL-267, however, the Planning Commission approved a Lot-Split allowing the creation of the subject property, despite the fact that the proposed lot would not comply with the minimum 30' of public street frontage required. It is presumed the Applicant was not aware of the frontage standards of the Zoning Code, and relied upon the Planning Commission's approval. If this is

58

the case, by no fault of the Applicant, a substandard lot of record was created, with sanction by the City of Bixby.

The subject property has extraordinary or exceptional conditions or circumstances which are peculiar to the subject property by virtue of the Lot-Split approval conferred upon it by BL-267, approved in 2002, the Public road easement, and the other lot division particulars described hereinabove.

Such extraordinary or exceptional conditions or circumstances are peculiar to the subject property and do not apply generally to other property in the same district because substandard lots of record 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.

Strict application of the bulk and area standards to the subject property would cause an unnecessary hardship, by disallowing the expansion of the house. Further, the subject property is presently "unbuildable" due to its illegally nonconforming status and Zoning Code Section 11-8-1.

Because the subject property has existed in its present state since approximately 2002 without complaints or adverse impacts on adjoining properties, has legal access to 109th E. Ave., a Public street maintained by the City of Bixby, and recognizing that the Planning Commission approved the creation of the subject property for Lot-Split, thus allowing for the construction of a dwelling, as is hereby proposed, Staff would advise 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. Staff believes that the Variance of 10', the difference between the 20' existing and the 30' of frontage required, would be the minimum necessary to alleviate the unnecessary hardship.

Staff Recommendation. Staff believes that the arguments provided by the Applicant and Staff appear to substantially meet some of the tests and standards of the Zoning Code and State Statutes. Staff recommends Approval.

E 118 ST S
RS-3

AG

A-1

E 121st ST S

PUD-58
E 121 PL S
103 E
104 E
E 122 ST S

RS-1
S 106 E AVE

S 109 E AVE

S GARNETT RD

S 115 E AVE
E 123 PL S

AG

Subject Tract

RS-3

E 123 PL S
S 103 E PL
E 124 ST S

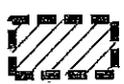
A-1

AG

E 124 PL S
S 104 E AVE
E 125 CIR S
S 105 E AVE
E 125 PL S

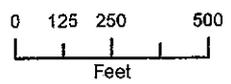


300' Radius



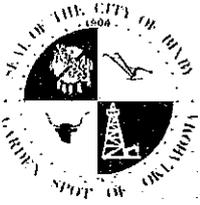
Subject Tract

BBOA-578



06 17-14





City of Bixby Board of Adjustment Application

Applicant: DANNY & LEANNE MARTIN
Address: 12305 S. 109TH E. AVE Bixby, OK 74006
Telephone: 918 369-1585 Cell-Phone: 409 9278 Email: danny@MartinPaintandBody.com

Property Owner: SAME If different from Applicant, does owner consent?
Property Address: SAME
Existing Zoning: AS Existing Use: RESIDENTIAL Use Unit #:
Proposed Use: RESIDENTIAL

LEGAL DESCRIPTION (If unplatted, attach a survey with legal description or copy of deed):

ATTACHED

Does Record Owner consent to the filing of this application? YES NO

If Applicant is other than Owner, indicate interest:

Is subject tract located in the 100 year floodplain? YES NO

Application for: Variance Special Exception Appeal Interpretation

SET OUT BELOW THE SPECIFICS OF YOUR APPLICATION. WHERE APPLICABLE, INDICATE PERTINENT ORDINANCES, PROVISIONS, USES, DISTANCES, DIMENSIONS, ETC. YOU SHOULD ATTACH ANY PLOT PLANS, PHOTOGRAPHS, AND OTHER FACTUAL INFORMATION WHICH WILL ASSIST THE BOARD IN DETERMINING THE MERIT OF YOUR APPLICATION:

APPLICANTS FOR VARIANCE COMPLETE THE FOLLOWING: (attach a longer narrative if desired)

13.07

- a. Why would the literal enforcement of the Zoning Code create an unnecessary hardship?
WE OWN A HOME ON APPROXIMATELY 3.3 A (16,07A) AND WANT TO ADD A GARAGE AND UTILITY ROOM. WITHOUT THE VARIANCE THIS IS NOT POSSIBLE
- b. What makes your property peculiar, extraordinary, or exceptional as compared to other properties in the same district?
THE HOUSE WAS CONSTRUCTED IN 1970 PRIOR TO THE BIXBY ZONING ORDINANCE
- c. Explain why the granting of a variance will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Zoning Code or Comprehensive Plan.
THE ADDITION TO THE HOUSE WOULD BE APPROXIMATELY 135' FROM THE PROPERTY TO THE NORTH AND 83' FROM THE EAST PROPERTY LINE
- d. Explain why the variance would be the minimum necessary to alleviate the unnecessary hardship.
IT IS REQUIRED BY THE CURRENT BIXBY ORDINANCES

61

City of Bixby Board of Adjustment Application

APPLICANTS FOR A SPECIAL EXCEPTION COMPLETE THE FOLLOWING: (attach a longer narrative if desired)

Describe the Special Exception and the Use Unit for the Special Exception as indicated in the Bixby Zoning Code. Explain why the Special Exception will be in harmony with the spirit and intent of this title, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

APPLICANTS MAKING AN APPEAL OF A BUILDING OFFICIAL ACTION COMPLETE THE FOLLOWING: (attach a longer narrative if desired)

Describe the nature of the appeal in detail:

APPLICANTS REQUESTING AN INTERPRETATION OF THE ZONING CODE OR MAP COMPLETE THE FOLLOWING: (attach a longer narrative if desired)

Describe the nature of the request in detail:

✓ BILL ADVERTISING CHARGES TO: BENCHMARK CONSTRUCTION
(NAME)
10026-A S. MINGO #444 TULSA, 74133 918-645-9000
(ADDRESS) (CITY) (PHONE)

I do hereby certify that the information submitted herein is complete, true and accurate:

✓ Signature: Darwin Mat Kearney Date: 3-26-13

APPLICANT - DO NOT WRITE BELOW THIS LINE

BBOA-____ Date Received _____ Received By _____ Receipt # _____
 Board of Adjustment Date _____

____ Sign(s) at \$ 50.00 each = \$ _____; Postage \$ _____; Total Sign + postage \$ _____

FEES: Variance	Special Exception	Appeal/Interpretation	BASE FEE	ADD.	TOTAL
\$75.00	or \$100.00	or \$25.00	= _____	+ _____	= _____

BOA Action: _____ Conditions: _____

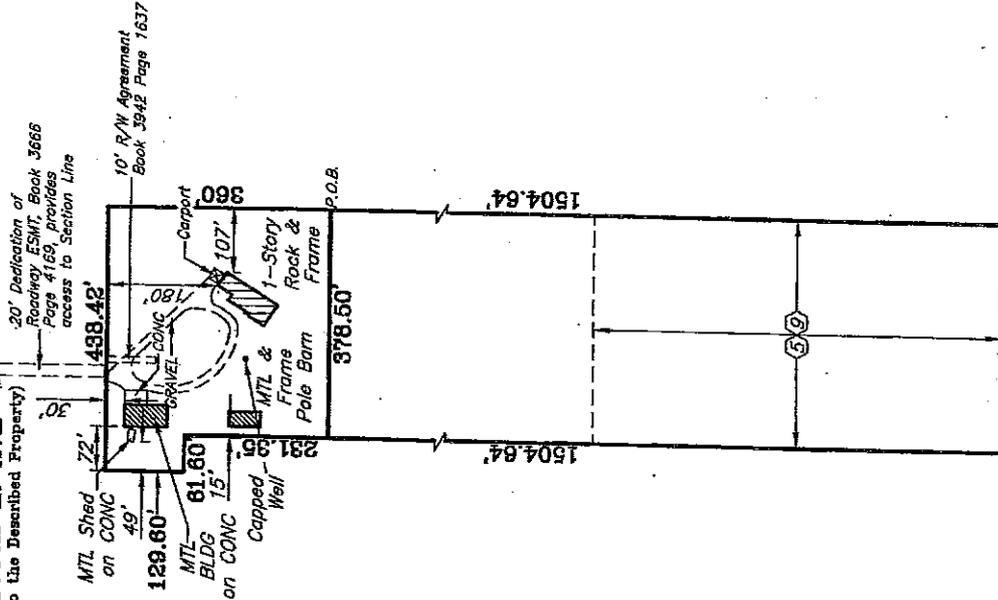
Date: _____ Roll Call: _____

Staff Rec. _____

62

MORTGAGE INSPECTION PLAT

S. 109th E. AVE.
(Access to the Described Property)



SYMBOL LEGEND

- W/E UTILITY ESMT
- B/E DRAINAGE ESMT
- B/L BUILDING LINE
- B/E BURIED ELECTRIC
- S/E SERVICE CABLE
- E/AS EASEMENT (APPROXIMATE LOCATION)

LEGAL DESCRIPTION

A TRACT OF LAND LYING IN THE WEST HALF OF THE NORTHEAST QUARTER (W/2 NE/4) OF SECTION SIX (6), TOWNSHIP SEVENTEEN (17) NORTH, RANGE FOURTEEN (14) EAST OF THE INDIAN BASE AND MERIDIAN, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE U.S. GOVERNMENT SURVEY THEREOF, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SAID WEST HALF OF THE NORTHEAST QUARTER (W/2 NE/4), SAID POINT LYING 1504.64 FEET NORTH AND PARALLEL TO SAID WEST LINE OF THE NORTHEAST QUARTER (W/2 NE/4) A DISTANCE OF 378.50 FEET TO A POINT; THENCE NORTH AND PARALLEL TO THE SAID EAST LINE A DISTANCE OF 231.95 FEET TO A POINT; THENCE WEST AND PARALLEL TO THE SAID NORTH LINE A DISTANCE OF 61.60 FEET TO A POINT; THENCE NORTH A DISTANCE OF 15.00 FEET TO A POINT LYING 438.42 FEET SOUTH OF THE POINT OF BEGINNING; THENCE SOUTH OF THE SAID NORTH LINE A DISTANCE OF 438.42 FEET TO A POINT ON SAID EAST LINE; THENCE SOUTH 380.00 FEET TO THE POINT OF BEGINNING.

THE EAST 378.50 FEET OF THE SOUTH 1504.64 FEET OF THE WEST HALF OF THE NORTHEAST QUARTER (W/2 NE/4) OF SECTION SIX (6), TOWNSHIP SEVENTEEN (17) NORTH, RANGE FOURTEEN (14) EAST OF THE INDIAN BASE AND MERIDIAN, ACCORDING TO THE U.S. GOVERNMENT SURVEY THEREOF.

This property is located in flood zone "A", X-SHADED & X-UNSHADED as per FEMA Community Panel No. 402607 0630N, as last revised September 22, 1999.

CERTIFIED TO

MORTGAGEE: Daniel W. and La Arne Martin
 CLIENT: Flatfile and Abstract Services, Inc.
 First Mortgage Corporation
 File No.: 39798

INSTRUMENT NOTES

- This property was accessed by virtue of a 20 foot Roadway Easement recorded in Book 3966 at Page 416.
- The legal description appears to close.
- ④ Easement recorded in Book 3918 at page 442, affects a portion of this property - blanket easement.
- ⑤ Agreement recorded in Book 4600 at Page 2056, affects a portion of this property - blanket easement.
- The following recorded documents do not affect this property:
 - Easement recorded in Book 1300 at Page 450.
 - Agreement recorded in Book 2979 at Page 14.
 - Right-of-Way Agreement recorded in Book 4275 at Page 562.
 - Right-of-Way Easement recorded in Book 3035 at Page 1944.

SURVEYORS CERTIFICATE

HARDEN & ASSOCIATES, SURVEYING AND MAPPING, P.C. AN PROFESSIONAL CORPORATION, AND THE UNDERSIGNED REGISTERED PROFESSIONAL SURVEYORS AND MAPPERS, LICENSE NO. 0007, AUTHORIZATION NO. C-44343, RENEWAL DATE: JUNE 30, 2007, DO HEREBY STATE THAT IN OUR PROFESSIONAL OPINION THE ABOVE INSPECTION PLAT SHOWS THE DWELLING AS LOCATED ABOVE THE DESCRIBED TRACT BOUNDARIES AND THERE ARE NO ENCROACHMENTS THEREON BY VISIBLE PERMANENT IMPROVEMENTS, EXCEPT AS INDICATED. THAT THE ABOVE INSPECTION WAS CONDUCTED IN ACCORDANCE WITH THE REQUIREMENTS OF A CURRENT TITLE OPINION OR BY COMMITMENT FOR TITLE INSURANCE AND COPIES THEREOF PROVIDED TO US; THAT THE INSPECTION PLAT WAS PREPARED FOR IDENTIFICATION PURPOSES ONLY FOR THE MORTGAGEE AND PROPERTY OWNER OR BOUNDARY LINE SURVEY, THAT NO PROPERTY CORNERS WERE SET, AND IS NOT TO BE USED OR RELIED UPON FOR THE ESTABLISHMENT OF FENCE, BOUNDING OR OTHER UTILITIES, OR FOR THE PURPOSES OF ADEQUATE EGRESS ARE NOT SHOWN ON THIS INSPECTION PLAT UNLESS SPECIFICALLY REQUESTED BY THE CLIENT; THAT THIS INSPECTION PLAT IS THE PROPERTY OF THE CLIENT AND IS NOT TO BE REPRODUCED, COPIED, LOANED, REPRODUCED, OR OTHERWISE TRANSMITTED IN ANY MANNER WITHOUT THE WRITTEN CONSENT OF HARDEN & ASSOCIATES, SURVEYING AND MAPPING, P.C. THAT NO RESPONSIBILITY OF LIABILITY IS ASSUMED HEREIN OR OTHERWISE BY THE PRESENT OR FUTURE LAND OWNER OR OCCUPANT OF THE PROPERTY.

JAMES EDWARD HARVEY
 EDWARD HARVEY
 L.S. 1203
 JAMES EDWARD HARVEY
 EDWARD HARVEY
 L.S. 1203
 OCTOBER, 2005

HARDEN & ASSOCIATES Surveying and Mapping, PC
 2001 South 119th East Avenue
 Tulsa, Oklahoma 74116
 Certificate of Registration No. 4438

BY: DATE: Survey By: JAE Date: Checked By: JAE

MORTGAGE INSPECTION

Sheet 1 of 1

48 HOURS BEFORE YOU DIE, CALL ONE
 1-800-422-2643
 Oklahoma Licensed Surveyors, Inc.

63

23492 - 2nd c. Smith

302428

Lu. Smith
NOTARY PUBLIC
CLYDE WIRLINGER
COUNTY CLERK

BOOK 3666 PAGE 416

DEDICATION OF ROADWAY EASEMENT

JAN 10 4 35 PM '66
CLYDE WIRLINGER
COUNTY CLERK

KNOW ALL MEN BY THESE PRESENTS:

The undersigned, EIMAR SMITH and HELEN SMITH, husband and wife, owners of the following described property:

The North 385.2 feet of the East 285.00 feet of the NW/4 NE/4 of Sec. 6, T-17-N, R-14-E, Tulsa County, Oklahoma;

and the undersigned, CHARLES L. SMITH and SHIRLEY A. SMITH, husband and wife, owners of the following described property:

The South 385.2 feet of the North 770.4 feet of the East 285.00 feet of the NW/4 NE/4 of Sec. 6, T-17-N, R-14-E, Tulsa County, Oklahoma;

for One Dollar and other good and valuable consideration, do hereby dedicate to the Public for roadway purposes an easement covering the West twenty (20) feet of the above described tracts of land.

UNOFFICIAL COPY

Signed and executed this 7 day of January, 1966.



Elmar Smith

(Elmar Smith)

Helen Smith

(Helen Smith)

Charles L. Smith

(Charles L. Smith)

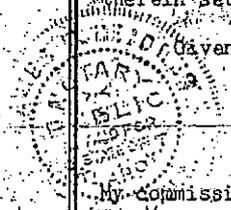
Shirley A. Smith

(Shirley A. Smith)

STATE OF OKLAHOMA }
COUNTY OF TULSA } .SS:

Before me, the undersigned, a Notary Public, in and for said County and State, on this 7 day of January, 1966, personally appeared EIMAR SMITH and HELEN SMITH, husband and wife, and CHARLES L. SMITH and SHIRLEY A. SMITH, husband and wife, to me known to be the identical persons who executed the within and foregoing instrument; and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year above written.



James H. Smith

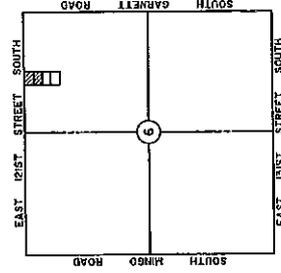
Notary Public

My Commission expires:
19 Sept 1964

64

PLAT OF SURVEY

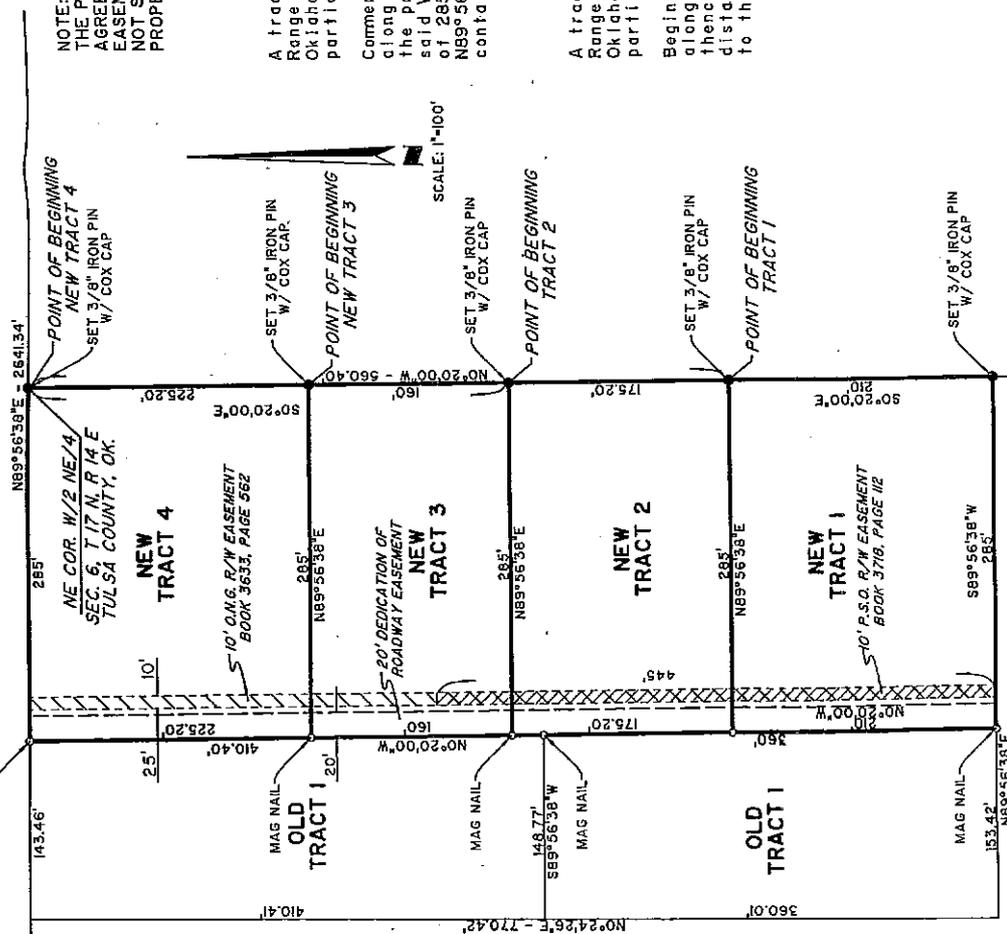
R 14 E



LOCATION MAP

NOTE:
THE PROPERTY DESCRIBED IN AN AGREEMENT FOR PRIVATE ROADWAY EASEMENT, BOOK 2978, PAGE 14, IS NOT SITUATED ON THE DESCRIBED PROPERTIES.

EAST 12¹/₂ STREET SOUTH



NEW TRACT 3

A tract of land lying in the W/2 NE/4 Section 6, Township 17 North, Range 14 East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the U.S. Government Survey thereof, more particularly described as follows:

Commencing at the Northeast corner of said W/2 NE/4; thence S0°20'00"E along the East boundary of said W/2 NE/4 a distance of 225.20 feet to the point of beginning; thence S0°20'00"E along the East boundary of said W/2 NE/4 a distance of 160.00 feet; thence S89°56'38"W a distance of 285.00 feet; thence N0°20'00"W a distance of 160.00 feet; thence N89°56'38"E a distance of 285.00 feet to the point of beginning, containing 1.047 Acres, more or less.

NEW TRACT 4

A tract of land lying in the W/2 NE/4 Section 6, Township 17 North, Range 14 East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the U.S. Government Survey thereof, more particularly described as follows:

Beginning at the Northeast corner of said W/2 NE/4; thence S0°20'00"E along the East boundary of said W/2 NE/4 a distance of 225.20 feet; thence S89°56'38"W a distance of 285.00 feet; thence N0°20'00"W a distance of 225.20 feet; thence N89°56'38"E a distance of 285.00 feet to the point of beginning, containing 1.473 Acres, more or less.

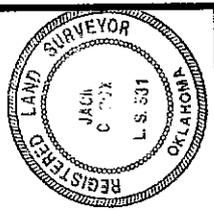
CERTIFICATE OF SURVEY:

We, COX & ASSOCIATES, INC., ENGINEERS of Tulsa, Oklahoma, hereby certify that we have made the above-described survey and that the plat is a true and correct representation of said survey.

Signed and sealed this 27th day of August 2004

COX & ASSOCIATES, INC., ENGINEERS

By: J. C. Cox
JACK C. COX
Registered Land Surveyor



Revised: 8-27-04
Revised: 8-20-03

04826

65