AGENDA
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 WEST NEEDLES
BIXBY, OK 74008
July 01, 2013 6:00 PM

CALL TO ORDER

MINUTES

(2) 1. Approval of Minutes for June 03, 2013

OLD BUSINESS

NEW BUSINESS

(16) 2. **BBOA-579 – Paul & Jimme Beth Hefner for Mary Elizabeth Brown.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-8-5 to allow an Accessory Dwelling Unit in an AG Agricultural District.
Property located: Part of the SE/4 SE/4 Section 24, T17N, R13E; 9013/9017 E. 161st St. S.

(26) 3. **BBOA-580 – Dr. Richard Stephens.** Discussion and possible action to approve a Variance from the 35' front yard setback per Zoning Code Section 11-7B-4.A.1 Table 3, to allow a building additon to an existing, nonconforming residence in the RE Residential Estate District.
Property located: Lot 6, Block 5, *Amended Southwood Extended*; 8933 E. 115th St. S.

ADJOURNMENT

Posted By: Enyart

Date: 06/05/2013

Time: 2:00 PM

All items are for Public Hearing unless the item is worded otherwise

MINUTES
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 W. NEEDLES AVE.
BIXBY, OK 74008
June 03, 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 Larry Whiteley.
Members Absent: Darrell Mullins.

1. Annual nominations and elections for Chairperson, Vice-Chairperson, and Secretary (Board of Adjustment By-Laws, Ord. 772).

Chair Jeff Wilson introduced the item. The Board members discussed the matter briefly and indicated favor for re-nominating all current office-holders. Larry Whiteley made a MOTION to NOMINATE and ELECT Jeff Wilson as Chair, Murray King as Vice-Chair, and Erik Enyart as Secretary. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

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

MINUTES

2. Approval of Minutes for April 23, 2013

Chair Jeff Wilson introduced the item. Larry Whiteley made a MOTION to APPROVE the Minutes of April 23, 2013 as presented by Staff. Murray King SECONDED the Motion. Roll was called:

2

ROLL CALL:

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

3. Approval of Minutes for May 06, 2013 (Record of No Meeting)

Chair Jeff Wilson introduced the item and made a MOTION to APPROVE the Minutes of May 06, 2013 (Record of No Meeting) as presented by Staff. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

AYE:	King, Wilson, Whiteley, & 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

[4]. (Continued from April 01, 2013)
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 summarized the Staff Report as follows:

To:	*Bixby Board of Adjustment*
From:	*Erik Enyart, AICP, City Planner*
Date:	*Friday, May 24, 2013*
RE:	*Report and Recommendations for:* *BBOA-576 – Jack Selby for the Bixby Rotary Club and Bixby Funeral Service*

LOCATION:	*– Part of the SW/4 NW/4 Section 12, T17N, R13E* *– Northeast corner of the intersection of 134th St. S. and Memorial Dr.*
LOT SIZE:	*1 acre, more or less*

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ZONING: *CG General Commercial District (RM-3 zoning located along east side of subject property parcel)*

REQUEST: *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*

SURROUNDING ZONING AND LAND USE:

North: *CG, RM-3, & RS-1; The RiverCrest Event Center, the Bixby Funeral Service zoned CG and RM-3, the Riverview Missionary Baptist Church on unplatted property zoned CG and in part of Gardenview Addition zoned RS-1, and single-family residential to the northeast in Gardenview Addition zoned RS-1.*

South: *(Across 134th St. S.) CG & CS/PUD 49; Vacant land zoned CG and the Tulsa Teachers Credit Union, the Self Storage Deptot ministorage business, and a vacant commercial lot, all within Bixby Crossing zoned CS with PUD 49.*

East: *RM-3; A vacant 4-acre tract belonging to the Riverview Missionary Baptist Church and the Autumn Park assisted living facility.*

West: *(Across Memorial Dr.) CG & CS/PUD 13a; Office-type businesses including Family Eye Care, Baker Small Animal Clinic, the Daily Family YMCA of Bixby, and a vacant former daycare facility, and vacant/wooded land zoned CS/PUD 13a to the southwest.*

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 subject property – PC Recommended Approval 03/17/1975 and Town Board of Trustees Approved 05/06/1975 (Ord. # 292).

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 (includes an easterly portion of subject property) for apartments – PC Recommended Approval 09/27/1982 and City Council Approved 11/01/1982 (Ord. # 467).

BL-80 – Carol Selby – Request for Lot-Split approval to separate a 0.6-acre tract (now the Bixby Funeral Service lot at 13307 S. Memorial Dr.) from a reportedly 11.5883-acre original tract (remainder tract contained subject property) – PC Recommended Approval 03/28/1983.

BL-93 – Jack Selby for L.C. Neel – Request for Lot-Split approval to separate a 20' X 130' tract to the west of the Bixby Funeral Service lot at 13307 S. Memorial Dr., in order to allow additional parking to offset right-of-way being purchased from the State Highway Department for U.S. Hwy 64 / Memorial Dr. – original tract contained approximately 11 acres (remainder tract contained subject property) – PC Recommended Approval 05/29/1984 and notes on the application form indicate [the City Council] granted Conditional Approval June 01, 1984.

BL-112 – L.C. Neel – Request for Lot-Split approval to separate (1) a ½-acre tract (now the RiverCrest Event Center lot at 13329 S. Memorial Dr.) and (2) a ½-acre tract from the southwest corner of an original tract containing approximately 11 acres (second ½-acre tract would have been a part of subject property, and remainder tract contained the balance of subject property) – Approved 05/27/1986 per notes on the application form (the second ½-acre tract was evidently not since created).

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

BL-249 – Ron Smith for Resco Enterprises, Inc. – Request for Lot-Split approval to separate a 4-acre tract and a 1-acre tract from a 5-acre tract (now the Autumn Park assisted living facility and a related independent living housing section) abutting to the east (5-acre tract evidently previously separated from balance of property which contained subject property) – City Planner Approved 05/12/2000.

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 (including subject property) – BOA Approved 04/07/2003.

BL-330 – Ron Wale for Riverview Baptist Church – Request for Lot-Split approval to separate 1-acre subject property from the 4-acre tract balance to the east belonging to the Riverview Missionary Baptist Church – PC approved 10/17/2005.

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 to the east of subject property (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 northwest 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-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-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.

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 northeast 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 west of subject property (see PUD 13/13A) – BOA Approved Revised Application 01/04/1993 per case notes.

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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 west 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-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 northwest of subject property – BOA Approved 09/02/2003.

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) – 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.

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 on property located to the north at 13201 S. Memorial Dr. – Withdrawn in April, 2007.

BACKGROUND INFORMATION:

The Bixby Rotary Club is an outstanding community-based civic organization that provides financial and other forms of assistance for various charitable causes in the Bixby community. The City of Bixby and its Staff support the Club and its mission, and all of the good and worthy works it does within the community. Certain members of City Staff are Rotarians and participate in the Club's functions. The annual Bixby BBQ & Blues Festival is one of the largest and most well received events the Club organizes, and proceeds from this and other events are put into its charitable programs. Although the City of Bixby wholeheartedly supports the Club and its mission, it is responsible for administering the Zoning Code, and has not allowed its relationship with the Club to influence its fair, objective, and impartial administration of the Code in this matter.

This application was continued from the April 01, 2013 regular meeting as requested by the Applicant at the meeting. On May 16, 2013, John Sawyer of the Rotary Club submitted six (6) copies a letter from the Club in support of its request. The letters were mailed by the City to the Board members as requested, and one (1) copy was retained for the file, and is attached to this report. Staff's recommendation has not changed.

ANALYSIS:

Property Conditions. The subject property is a relatively flat, vacant lot at the northeast corner of the intersection of 134th St. S. and Memorial Dr. (US Hwy 64). It is a "flag-lot" with the "panhandle" extending north along the east side of the RiverCrest Event Center lot abutting to the north. Per the Zoning Map, the west/front part of the property, including the area in which the sign contemplated by this application would be located, is zoned CS, and an easterly portion of the lot is zoned RM-3.

At one time, the subject property had a billboard-type sign of some sort at the southwest corner of the lot. Per the Applicant, there are still remnants of the base of the sign in the location they wish to construct the new sign contemplated by this application.

Using the "Historical Imagery" function of Google Maps to scroll back in time, it appears that the latest aerial photo in which the sign was evident was dated October 06, 2004. The sign appears to have been on the land since at least February 23, 1995, the oldest aerial imagery available through Google Maps.

The subject property appears to have been created by General Warranty Deed from Riverview Missionary Baptist Church to the Applicant, Bixby Funeral Service, Inc., recorded December 02, 2005 (cf. BL-330 approved 10/17/2005).

General. The Applicant is Jack Selby, owner of the land through the entity Bixby Funeral Service, Inc.

In or around February, 2013, the Applicant and John C. Sawyer, representing the Bixby Rotary Club, submitted a sign permit application which proposed to construct a 35'-high, two-cabinet ground sign at the southwest corner of the subject property. Although the permit application did not indicate this, per Staff's previous conversations with John Sawyer or possibly others involved in this project, the top 10' high by 20' wide sign cabinet would be a static sign with copy reading "Bixby Funeral Home." The information provided did not appear to indicate whether this would be internally or externally illuminated, or illuminated at all. Below this top cabinet, another 10' high by 20' wide sign cabinet would be an "LED Digital Double Faces Sign," which would be mounted on the monopole sign support structure ("pole") at a slightly-downward-facing angle. Although the provided information was not clear, per Staff's previous conversations with John Sawyer or possibly others involved in this project, Staff understood this would be the "billboard" element, which would have LED/electronic signage programming sometimes advertising community events, including the Rotary's BBQ & Blues Festival, and unused time would be sold to other businesses for advertisements. The revenue generated would be used by their foundation to support their charitable functions.

Upon inspecting the proposed use in relation to the Zoning Code, Staff determined that the proposed Use Unit 21 sign could not be permitted. The Bixby Zoning Code does not provide that this is a permitted principal use of a lot in any Zoning District. Further, Zoning Code Section 11-9-21.F explicitly prohibits "Outdoor Advertising Signs," "billboards," thus:

"F. Outdoor Advertising Signs:

1. *There shall be no commercial outdoor advertising signs (billboards) permitted within the city.*

2. *"Outdoor commercial advertising signs" are defined as those signs which are off premises from the property (business location) which is sought to be promoted or identified by the placement of such sign.*

3. *Off site commercial advertising signs (billboards), which are in place prior to July 1, 2002, shall be permitted for so long as they comply with other city ordinances governing and pertaining to the placement and use of such signs as permitted prior to the enactment of this subsection. (Ord. 852, 7-8-2002)"*

Other definitions which the Board my deem pertinent to its decision, found in Zoning Code Section 11-2-1 of the Zoning Code, include the following:

"SIGN, BUSINESS: A sign which directs attention to a business, commodity, service or entertainment conducted on the premises."

"SIGN, OUTDOOR ADVERTISING: A sign which directs attention to a business, commodity, service or entertainment, sold or offered elsewhere than the premises and only incidentally on the premises, if at all."

Therefore, by letter to Jack Selby of the Bixby Funeral Service, Inc. and John C. Sawyer of the Bixby Rotary Club dated February 21, 2013, Staff denied the sign permit application.

By this application, the Applicant is appealing the denial, and the interpretation on which it is based, to the Bixby Board of Adjustment pursuant to Zoning Code Sections 11-4-6 and 11-4-7.

The application consists of:

- *The two (2) page application form*
- *A one (1) page "Detailed Narrative to Board of Adjustment Application"*
- *Another one (1) page narrative dated 02/28/2013*

- *A one (1) page site plan*
- *A one (1) page sign exhibit*
- *A copy of Staff's letter denying the sign permit dated 02/21/2013*

For the most part, the arguments set forth in the application speak for themselves. Staff responds to the application and the arguments in the following paragraphs.

Although the narrative mentions terms such as "Hardship," "Variance," "Special Exception," etc., and the application form was not marked within the "Interpretation" box, the application is a request for (1) an Appeal of the sign permit denial, and (2) the Zoning Code interpretation on which the denial was based, and it is not an application for Variance or Special Exception. The Appeal and Interpretation sections of the application form have been completed, and the proper application review fees associated with these two items have been paid. Further, the Appeal and Interpretation were requested pursuant to specific advice given by the City on how to proceed upon sign permit denial.

The narrative written within the Appeal section of the application form is as follows:

"We maintain that this is not a new site for a sign – The existing sign was taken down but the base is still on the property – If land owner had known he could [lose] Billboard rights [the owner] would never had sign taken down."

This narrative appears to concede that the proposed sign would be a "billboard," in calling it thus by name.

Zoning Code Section 11-11-4 (not modified by Section 11-9-21.F.3) provides:

"11-11-4: NONCONFORMING SIGNS:

A sign lawfully existing at the effective date hereof or amendment of this title, but which would be prohibited under the terms of this title or amendment to this title, shall be deemed nonconforming, and may continue, including normal maintenance and change of face, if not rebuilt, enlarged, extended or relocated; provided, that if the sign was erected within an AG district after the effective date hereof and becomes nonconforming upon rezoning to an R or O district and is not accessory to an on site principal use, the sign shall be removed within six (6) months from the effective date of the rezoning; other nonconforming signs if located in an R district and not accessory to an on site principal use, shall be removed within six (6) months from the date the sign became nonconforming. (Ord. 272, 4-2-1974)" (emphasis added)

Presuming the old sign was lawful in the first place, this provision applies to the subject property, which had a sign since at least 1995, which sign became nonconforming upon passage of the billboard prohibition amendment in 2002. Under this provision, a sign completely removed cannot lawfully be rebuilt, regardless of the passage of any amount of time. Further, the last two sentences under this provision demonstrate legislative intent not only to abate sign nonconformities through time by attrition, but also to require the removal of certain legally nonconforming signs under certain circumstances. The argument that the base of the former sign was not fully removed with the sign itself does not appear to be a valid argument for the allowance of the construction of a new nonconforming billboard sign.

The narrative written within the Interpretation section of the application is as follows:

"Our Boards are "On Premise" Marketing boards that market a product that can be purchased "on site" at our kiosk on the property. 80 to 90% of profits go to others (City of Bixby)."

For the record, the City of Bixby receives no money from the Bixby Rotary Club, other than normal fees for services or application processing, nor does it receive revenues from billboards throughout the City. Similar language in the narrative dated 02/28/2013, "...amount of money we give to the City of Bixby," and "...profits from the sign go back to the City of Bixby..." should not be interpreted as meaning the Club gives money to the City of Bixby, and is presumed to mean they money the Club spends on charitable causes within the Bixby community.

The "kiosk" referenced in the narrative, based on previous discussions with the billboard manufacturer, John Sawyer, and others representing the Bixby Rotary Club, sometimes come in the form of a small, portable building installed at the base of the sign, technically open for someone to enter and purchase a service or good advertised on the billboard (or anything else) using an Internet-connected computer located within the building. In the case of this application, the Applicants have discussed, in the alternative, installing a computer kiosk within the RiverCrest Event Center building on the ½-acre tract abutting to the north. Although this is a clever gimmick for deeming a billboard an "on-premise ground sign," which may be permitted in other jurisdictions, it would present a problematic precedent for the City, as any house, office, or commercial building containing an Internet-connected computer could request permission to erect a billboard.

The narrative dated 02/28/2013 expands on the arguments inscribed within the Appeal and Interpretation sections of the application form, but present no new arguments requiring Staff comment.
Staff Recommendation. For the reasons outlined in the analysis above, Staff believes that the Bixby Zoning Code Section 11-9-21.F explicitly proscribes the proposed billboard / outdoor advertising sign and disallows a Use Unit 21 sign as a principal use of a lot in all Zoning districts. Staff recommends the appeal be denied.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. John Sawyer of 3939 E. 110th St. S., Tulsa, asked for "an exception to the rule or ordinance for this sign." Mr. Sawyer stated that the sign would allow the Bixby Rotary Club to "take everything to the next level." Mr. Sawyer described the Rotary Club's charitable contributions to causes in the Bixby community. Mr. Sawyer stated that the Rotary Club's Barbecue & Blues Festival has grown so large the Club has to beg to get people to give sponsorships. Mr. Sawyer stated that the proceeds go to various causes in Bixby. Mr. Sawyer stated that the sign would cost $300,000 to purchase and install. Mr. Sawyer stated that 95% of the revenue would be given to the Bixby community, including the Bixby Community Outreach Center. Mr. Sawyer stated that this was seen as a way to maximize the Club's efforts. Mr. Sawyer stated that he understood the concern that this would set a precedent, but he believed the City could confine this to a narrow corridor. Mr. Sawyer stated that, if the sign was put up by Whistler or Lamar, all of the revenues would go out of the community. Mr. Sawyer stated that the base of the sign was still in the ground. Mr. Sawyer stated that the sign could be used for Amber Alerts and Silver Alerts and could be used for community announcements. Mr. Sawyer stated that the sign would not just describe the make and model and license number of the car, but would show pictures of the missing child. Mr. Sawyer stated that the sign could announce the [Green] Corn Festival, along with pictures, and City Council meetings, and "special this or that." Mr. Sawyer provided an example of an alert.

Larry Whiteley noted that, if the sign was gone, it "cannot be put back." Mr. Whiteley asked rhetorically why, if this was granted, someone else would not ask for the same approval. Mr. Whiteley confirmed with John Sawyer that the Rotary Club would not stop its charitable giving if it was not approved for this sign.

Larry Whiteley stated that the Board was not in the position to [approve the billboard prohibited by law]. Mr. Whiteley stated that the City Council had the final say, but "they won't allow new [billboards]." Mr. Whiteley stated that the Board could not give an "exception to something against the law."

John Sawyer expressed objection that [he and the Rotary Club] were told by the City to try this application but it appeared they were wasting their time.

Erik Enyart addressed the Board members and John Sawyer in turn and stated, "We counseled the Applicant that this would be the recourse if they wanted to proceed, despite our admonition not to apply for the permit. They are proceeding as we counseled. The burden is on you to demonstrate that the City of Bixby has made some error in interpretation of Code, some error in fact or [conclusions of law]. This is very much a fact- and law-centered case." Mr. Enyart stated that another option discussed in meetings with the Applicant included asking the City Council to repeal the 2002 billboard prohibition ordinance, but this would legalize billboards for everybody, and so was not recommended to the Applicant.

Chair Jeff Wilson recognized Jack Maxwell of 11616 S. Fulton Ave., Tulsa, but asked Patrick Boulden to speak first from a legal standpoint. Mr. Boulden stated that a change to the Zoning Code would require the Planning Commission hold a Public Hearing, and then make a recommendation to the City Council, but [the Rotary Club] could ask the City Council to direct the [Planning Commission] to do that. Mr. Boulden stated that the City could not allow uses not allowed by the [Zoning] Code in a certain districts, but billboards were prohibited everywhere. Mr. Boulden stated that State Statutes prohibits this Board from granting a "Use Variance, and City Ordinance prohibits this Board from granting a "Use Variance." Mr. Boulden stated that, if it were granted, it would be "illegal and void from the beginning."

Jack Maxwell spoke in favor of the application and noted that the Rotary Club organized the first BBQ & Blues Festival to generate $45,000 to install a sign for the [Bixby Public Schools District]. Mr. Maxwell stated that the City of Bixby matched the Rotary Club's money to put up the amphitheater [in Washington Irving Memorial Park & Arboretum]. Mr. Maxwell stated that the [Bixby Optimist Club] also made a deal with the City of Bixby so that the restroom facility looks like Washington Irving's "ice house." Mr. Maxwell stated that the Food Network contacted [the Club] because they had heard of the BBQ & Blues Festival, and "the Pit Masters [show] was filmed in our event." Mr. Maxwell stated, "The City of Bixby should find some way to help us."

Larry Whiteley stated, "We know it's against the law" to permit this sign, and suggested the Applicant take their case to the City Council.

One of the Applicants suggested that the City Council could keep the billboard prohibition but authorize [the Rotary Club] to have one due to its [nonprofit status and/or charitable activities].

Erik Enyart stated that it would not be proper to "carve out an exception for certain classes of citizens, such as charitable organizations," over all others, to make a "*prima facie* determination of who gets to exercise their First Amendment free speech rights." Mr. Enyart stated that the City was obligated to "apply sign regulations equally to all citizens."

Buster McCurtain of 12801 S. 14th Cir., Jenks, stated that he and the others had met with the City Attorney and Erik Enyart [about this before the application was filed]. Mr. McCurtain stated that everyone was in this together and everyone should work together. Mr. McCurtain stated, "It's not our intent to put you folks on the spot." Mr. McCurtain stated that he understood that, "if you turn this down, our only recourse is to sue you guys in civil court."

Larry Whiteley stated that, although it would be more difficult, another option may be to get enough signatures to get the citizens to vote in a special election.

Erik Enyart addressed the Applicant and stated that, although asking the City Council to amend the Zoning Code to repeal the billboard prohibition of 2002 was an option available to them, he did not want to mislead them by [pointing this out]. Mr. Enyart stated that City Staff would not recommend the City Council do this, if so proposed.

Murray King confirmed with Erik Enyart that the definition of a "billboard" was a sign that was not on premise. Mr. King asked if the *Sutherland's* sign was allowable, and Mr. Enyart stated that it was because it "exclusively advertises *Sutherland's*." A Rotarian stated that that sign had advertised the BBQ [& Blues Festival].

Larry Whiteley suggested the Applicant, instead of facing denial, Withdraw the application, which would require that the Applicant appeal to District Court, rather than pursue other options.

Jack Maxwell asked about existing signs and "grandfathering." Mr. Maxwell asked if the Bixby Public Schools' sign could be replaced with a larger sign. Mr. Maxwell stated that a gentleman earlier in the meeting made a statement that needed correction for the record: 90% of the revenues go back to the community, not 95%.

Erik Enyart stated that Jack Maxwell had a good question but he would have to investigate it before answering.

Patrick Boulden stated that a lawfully permitted use cannot be expanded or changed to another nonconforming use. Mr. Boulden stated that [that Bixby Public Schools' sign] would have to stay the same size and location.

Applicant Jack Selby of 14814 S. 52nd E. Ave. stated, "I respectfully request you withdraw this application." Dave Hill confirmed with Mr. Selby that he did not want to face a denial vote and have to go to District Court. Mr. Selby stated that he was not completely disinterested in the case, as he would receive a monthly rent, but he did not want to go forward with the application.

Patrick Boulden declared that the Board had recognized the application as Withdrawn.

Chair Jeff Wilson stated that there was no action for the Board to take, since the application was Withdrawn. Mr. Wilson advised the Applicant that they could "still go the legislative route" and ask the Council to "amend the ordinance."

Jack Selby asked if he would be permitted to install a sign here only for his business. Erik Enyart responded that the sign would be on a vacant 1-acre tract, and could not be permitted at this time. Mr. Enyart stated that signs were only permitted on the lot containing the business being advertised. Mr. Enyart stated that Mr. Selby could legally combine that tract with the lot containing the business, and then it would be permit-able, provided it exclusively advertised the funeral service.

Larry Whiteley asked the Applicant if the City had not counseled them. Erik Enyart responded, "We did have meetings with them." Mr. Whiteley asked why the Applicant proceeded, and Mr. Enyart responded, "We advised against making application, but told them that if they wanted to proceed anyway, this was the way to go."

Buster McCurtain stated that [he and the Rotary Club] would pursue other options.

John Sawyer, Jack Maxwell, Jack Selby, and Buster McCurtain left at this time.

ADJOURNMENT

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

ROLL CALL:

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

The meeting was Adjourned at 6:44 PM.

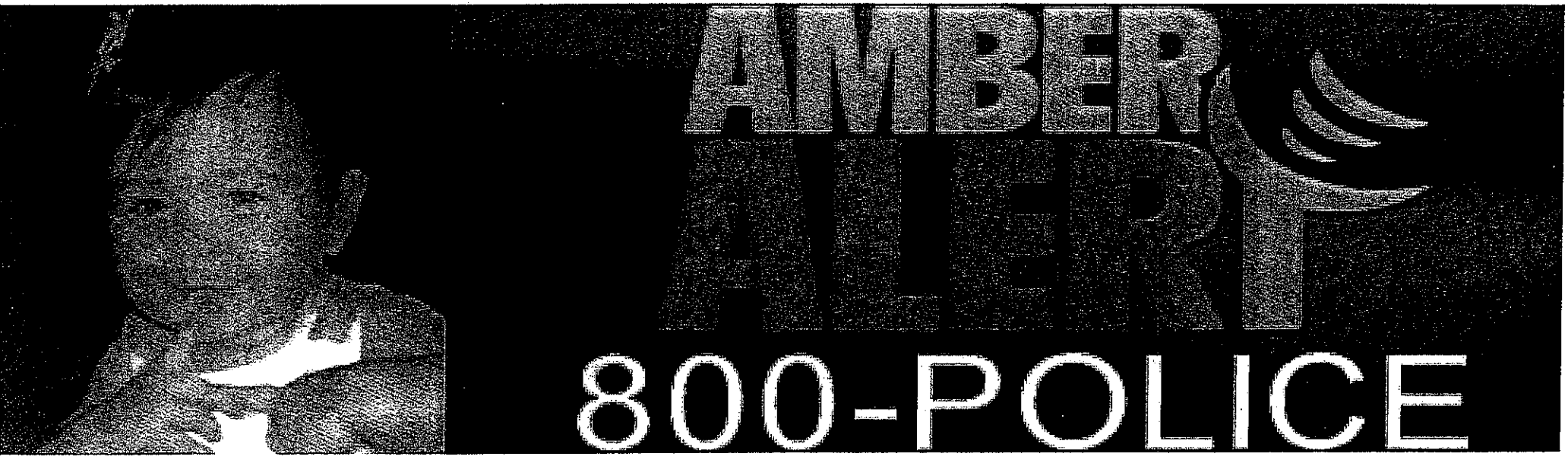
APPROVED BY:

Chair

Date

City Planner/Recording Secretary

12



CITY OF BIXBY

JUN 03 2013

RECEIVED

By Enyart

cf. BBOA-576

12

Bixby Town Hall Meeting at 7:30 with Senator Tom Coburn

BIXBY BOARD OF ADJUSTMENT
SIGN IN SHEET
DATE: June 03, 2013

NAME	ADDRESS	ITEM
✓ 1. John Lawyer	3939 E 110th St	Rotary Sign
2. Frank Mapes	11616 S. Fulton Hop	
3. Brett McCall	12001 S 144th Tulsa	
4.		
5.		
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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

Date: Tuesday, June 25, 2013

RE: Report and Recommendations for:
BBOA-579 – Paul & Jimme Beth Hefner for Mary Elizabeth Brown

LOCATION:
- Part of the SE/4 SE/4 Section 24, T17N, R13E
- 9013/9017 E. 161st St. S.

LOT SIZE: 16 acres, more or less

ZONING: AG Agricultural District

REQUEST: Special Exception per Zoning Code Section 11-8-5 to allow an Accessory Dwelling Unit in an AG Agricultural District

SURROUNDING ZONING AND LAND USE:

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

South: (Across 161st St. S.) AG, OL, CS, RM-1, & RS-2; Rural residences and agricultural land.

East: (Across Mingo Rd.); Rural residences along 161st St. S., Bixby Creek within its right-of-way, and agricultural land; other than the Bixby Creek right-of-way, all areas to the east of Mingo Rd. are in unincorporated Tulsa County.

West: AG & CS; The Bixby Public Schools' Central Intermediate campus at 9401 E. 161st St. S. and rural residences along the south side of 161st St. S.

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

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

BBOA-92 – Triple "S" Drilling Company for Clifton W. Brown – Request for Special Exception to allow oil well drilling on the SE/4 SE/4 of this Section, including subject property – BOA Conditionally Approved 11/09/1981.

BBOA-314 – Guy & Wendy McCoy – Request for Special Exception to allow a Use Unit 9 mobile home in the AG district for subject property, then approximately 20 acres in size – BOA Conditionally Approved 03/04/1996.

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

BZ-22 – Robert Leikam – request for rezoning from AG to CS, OL, RM-2, and RS-2 for an approximately 75 acres abutting subject property to the south/southeast across 161st St. S., the E/2 NE/4 Less & Except the W/2 NW/4 NE/4 NE/4 of this Section – PC Recommended Approval, to include amending the RM-2 part to RM-1, on 05/07/1974 and City Council Approved with the amendment on 06/18/1974 (Ord. # 274).

BBOA-228 – Lisa Graves for Violet D. Young – Request for Variance from certain bulk and area requirements to allow a Lot-Split (BL-154) for approximately 5 acres to the west of subject property, including the tracts at 703/707 and 711 S. Riverview Rd. and an approximately 0.8-acre tract located just south of 711 S. Riverview Rd. – BOA Conditionally Approved 08/06/1990.

BBOA-303 – J.C. Devine – Request for Variance from certain bulk and area requirements to allow a Lot-Split (BL-199) for a 4-acre tract to the southwest of subject property at 8710 E. 161st St. S. – BOA Conditionally Approved 10/02/1995.

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 west 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 west 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 west of subject property located just south of 711 S. Riverview Rd. – PC Approved 06/19/1995.

BZ-213 – Carolyn Wagnon – request for rezoning from AG to CS for an approximately 0.8-acre tract to the west 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 to the west of subject property from AG to CG at about 703/707 S. Riverview Rd. – Withdrawn in 1996.

BBOA-321 – Carolyn Wagnon – request for Special Exception to allow Use Unit 23 in the CS district for land to the west of subject property at about 703/707 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 to the north of subject property at the approximately 15700-block of S. Mingo Rd. – Denied 08/03/1998.

BZ-245 – James H. Powell – Request for rezoning of an approximately 1.15-acre tract of the school property to the north of subject property 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 to the north of subject property – 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 to the north of subject property – BOA Approved 04/05/2010.

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

BZ-348 – JR Donelson, Inc. for Bixby Public Schools – request for rezoning approximately 20 acres at approximately 15600 S. Mingo Rd. and the former approximately 1.15-acre tract to the north of subject property at the approximately 15800-block of S. Mingo Rd. 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).

BACKGROUND INFORMATION:

One of the several changes the "General Cleanup" Zoning Code Text Amendment (Ord. # 2031 approved December 21, 2009) made included providing an approval process for Accessory Dwelling Units (ADUs). Zoning Code Section 11-2-1 now provides a definition for an ADU:

"DWELLING UNIT, ACCESSORY (ADU): A subordinate residential unit incorporated within, attached to, or detached from a single-family residential unit and having its own sleeping, cooking, and sanitation facilities. Such subordinate unit shall not be subdivided or otherwise segregated in ownership from the principal residential unit. Such unit shall not be occupied by more than three (3) persons. See Section 11-8-5."

Section 11-8-5 was amended to read as follows:

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

Not more than one single-family dwelling may be constructed on a lot, except in the case of a lot which is within an approved planned unit development or an Accessory Dwelling Unit (ADU) approved by Special Exception as follows:

A. A lot of record which is subject to a restrictive covenant prohibiting more than one (1) dwelling unit per lot shall not be eligible for an ADU Special Exception;

B. The Board of Adjustment shall consider the specific plans for the ADU and its relation to the principal dwelling and surrounding neighborhood and shall place reasonable conditions on the Special Exception approval as may be necessary to prevent undue adverse impacts;

C. ADUs, if detached from the principal dwelling, shall meet the requirements prescribed for a detached accessory building;

D. An ADU shall not be subdivided or otherwise segregated in ownership from the primary residential unit;

E. An ADU shall not contain more than one (1) bedroom;

F. Manufactured and modular homes shall not be used as ADUs;

G. ADUs, whether detached from or attached to the principal dwelling, shall match the exterior materials of the primary residential unit and comply with the restrictive covenants affecting the lot, if any;

H. An ADU shall not be considered in calculating livability space or land area per dwelling."

This is the second Special Exception for an ADU requested under the new ADU amendment to the Zoning Code. The first, BBOA-524 – Richard Ekhoff, was Conditionally Approved 08/02/2010 for an acreage located at 9024 E. 101st St. S.

ANALYSIS:

Property Conditions. The subject property contains approximately 16 acres and is zoned AG. Although a singular parcel, it is physically separated by the Bixby Creek right-of-way acquired by the City of Bixby some years ago. To the north of the creek are approximately 11.5 acres, entirely within the 100-year (1% Annual Chance) Regulatory Floodplain, part of that within the Floodway, which is somewhat wooded and used for livestock grazing. The southerly approximately 4.5 acres is agriculturally-used and contains three (3) buildings:

1. A single-wide mobile home along the west side,
2. A metal barn toward the center of the 161st St. S. frontage, and
3. A small agricultural or storage building just to the southeast of the barn.

This application proposes to construct the ADU as a building addition to the existing barn building.

The subject property is located in an unplatted rural residential and agricultural area centered along 161st St. S. between Riverview Rd. and the Arkansas River. To the east of Mingo Rd., save for the Bixby Creek right-of-way, the land is located in unincorporated Tulsa County.

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 Trail.

The existing residential use and proposed ADU residential use element should be considered not inconsistent with the Comprehensive Plan.

Surrounding Zoning and Land Use Compatibility. Surrounding zoning patterns are primarily AG, and the surrounding land is primarily rural residential and agricultural on acreage tracts.

The existing residential and agricultural uses and proposed ADU residential use element would appear to be not inconsistent with surrounding land uses and zoning patterns.

Accessory Dwelling Units (ADUs). Because Accessory Dwelling Units by Special Exception are a newly allowed land use element, and experience with them in Bixby is limited, care should be taken to ensure that the approval is not detrimental to the neighborhood. To this end, in addition to the standard regulations for ADUs provided in the Zoning Code, Staff has provided specific recommended Conditions of Approval listed in the Staff Recommendation section of this report.

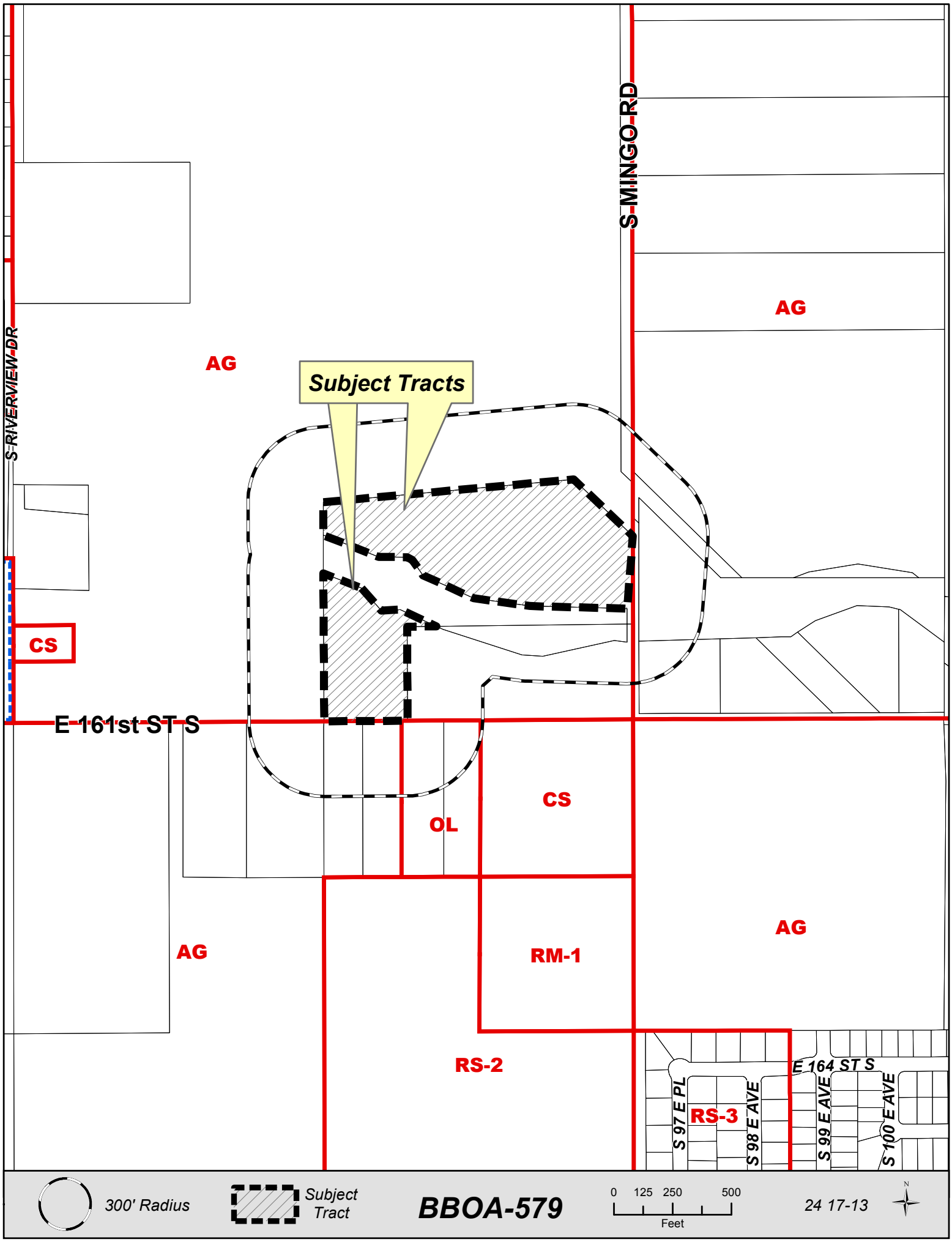
The Applicant provided a sketch site plan showing a 30' X 50' building addition to the north end of the west side of the barn.

Zoning Code Section 11-8-5.G provides, "ADUs, whether detached from or attached to the principal dwelling, shall match the exterior materials of the primary residential unit and comply with the restrictive covenants affecting the lot, if any." Staff notes that the existing dwelling is a mobile home, and this provision will not apply if the owners wish to 'upgrade' the exterior materials from that which would match the mobile home.

Staff Recommendation. Based on the application, the Comprehensive Plan, surrounding zoning and land use patterns, and the arguments presented in the analysis above, Staff believes that the proposed Special Exception for an ADU 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 subject to the following Conditions of Approval:

1. The ADU approval shall only extend to the proposed building addition to the existing barn as proposed by the Applicant.
2. The ADU shall fully comply with the Building Code.
3. If the ADU building is ever substantially damaged, meaning for these purposes that the cost to repair such damage would exceed 50% of the pre-damaged value of the building, the Special Exception shall expire and be automatically vacated and the ADU use of the building addition shall not be restored, absent further Zoning approval as may be then required.
4. If any of the facilities necessary to support living quarters (sleeping, kitchen/cooking, sanitation, etc.) are disabled or removed, the Special Exception shall expire and be automatically vacated and the ADU use of the building shall not be restored, absent further Zoning approval as may be then required.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Subject Tract
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City of Bixby
Board of Adjustment Application

Applicant: Paul & Jimme Beth Hefner
Address: 9013 E. 161st St S.
Telephone: (918) 366-6357 *Cell Phone:* (918) 557-8162 *Email:* hefner@olp.net
Property Owner: Mary Elizabeth Brown Liz Brown If different from Applicant, does owner consent? yes
Property Address: 9013 E. 161st St. S.
Existing Zoning: _____ *Existing Use:* _____ *Use Unit #:* _____
Proposed Use: Accessory Dwelling

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

See attached tax bill for legal.

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

If Applicant is other than Owner, indicate interest: Grand daughter

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

Application for: [ ] Variance [X] 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?

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.

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

22

May 27, 2013

City of Bixby

Board of Adjustment

To whom it may concern,

We are requesting a special exception at 9013 E. 161st St. S., Bixby, Ok. We are requesting permission to add living quarters to the existing barn on the premises. There is currently a mobile home on the property, which consists of 4 ½ acres. The mobile home will be taken out when something happens to my grandmother, who is 83, Mary Elizabeth Brown. Our problem is we are short approximately 20 feet of frontage to add an entire home. This property has been sold to my husband and me, on the contingency of her being able to live in the mobile home for the remainder of her life. This property has been in our family for over 50 years with the exception of being sold for a short period, and re-purchased by my grandmother. Our only other option, is to have the mobile home re-zoned, and taken out of its current zoning, as Agriculture, per the City Planner. We want to keep the Agriculture zoning. The property to the west is owned by the Bixby Public Schools, and the property east is owned by my parents, Jack and JoAnne Foreman. Please take our application into consideration.

Sincerely,

Jimme Beth Foreman -Hefner

Mary Elizabeth Brown

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.

We would like to add on to an existing dwelling (barn). with a accessory dwelling.

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: Jimme Beth Hefner (NAME)

P.O. Box 634 (ADDRESS) Bixby (CITY) (918) 366-6357 (PHONE)

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

Signature: Jim Beth Hef Mary Elizabeth Brown Date: 5/27/13

APPLICANT – DO NOT WRITE BELOW THIS LINE

BBOA 579 Date Received 05/28/2013 Received By Enyart Receipt # 01072515
Board of Adjustment Date 07/01/2013

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

FEES: Variance $75.00 or Special Exception $100.00 or Appeal/Interpretation $25.00 = BASE FEE 75.00 + ADD. 50 = TOTAL $125.00

BOA Action: Conditions:

Date: Roll Call:
Staff Rec.

24

Brown's
Residence
Tenant house

N

9013 E. 165th S.

161st Street

30x 50
Proposed
Dwelling
Hefner's
Residence

50x 80
Existing Dwelling Barn

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

Date: Wednesday, June 26, 2013

RE: Report and Recommendations for:
BBOA-580 – Dr. Richard Stephens

LOCATION: – 8933 E. 115th St. S.
– Lot 6, Block 5, *Amended Southwood Extended*

LOT SIZE: 1 acre, more or less

ZONING: RE Residential Estate District

REQUEST: Variance from the 35' front yard setback per Zoning Code Section 11-7B-4.A.1 Table 3, to allow a building addition to an existing, nonconforming residence in the RE Residential Estate District

SURROUNDING ZONING AND LAND USE: RE; Residential single family homes on large lots in *Amended Southwood Extended.*

COMPREHENSIVE PLAN: Low Intensity + Residential Area

PREVIOUS/RELATED CASES: None found.

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

BBOA-34 – James Wilson – Request for Interpretation of Zoning Code Section 1240(a) (current Section 11-11-5.A) to determine if the exception for side yard setbacks along a public street applied to accessory buildings; pertained to property located 2 blocks to the south of subject property, Lot 5, Block 12, *Amended Southwood Extended*, 9110 E. 116th St.

– BOA interpreted "accessory structures are considered as coming under the intent of said section" on 10/12/1976.

BBOA-57 – Lyle J. Davis Jr. – Request for Variance from the 15' side yard setback along a public street for an existing detached garage on property located 2 blocks to the south of subject property, Lot 5, Block 12, *Amended Southwood Extended*, 9110 E. 116th St. S. – Approved by BOA 02/13/1979.

BBOA-153 – Lucile S. Humbrecht – Request for Variance from the 15' side yard setback for an existing house located to the north of the subject property, Lot 14, Block 2, *Amended Southwood Extended*, 11225 S. 90th E. Ave. – Approved by BOA 12/09/1985.

BBOA-428 – Russell Cozort – Request for Variance from an unspecified setback for a house located to the southeast of the subject property, Lot 6, Block 4, *Twin Creeks II*, 11709 S. 96th E. Pl. – Approved by BOA 09/07/2004.

BBOA-436 – L. Richard Howard – Request for Variance from the 25' front yard setback for an existing house located to the east of the subject property, Lot 5, Block 9, *Amended Southwood Extended*, 11435 S. 94th E. Ave. – Approved by BOA 01/03/2005.

BBOA-530 – Jeff DeLaughter – Request for Variance from the 35' front yard setback per Zoning Code Section 11-7B-4.A.1 Table 3, to allow an add-on to an existing, nonconforming residence in the RE Residential Estate District located 1 block to the south of the subject property, Lot 6, Block 7, *Amended Southwood Extended*, 9110 E. 115th St. S. – Approved by BOA 12/06/2010.

BACKGROUND INFORMATION:

ANALYSIS:

Subject Property Conditions. The subject property consists of Lot 6, Block 5 in *Amended Southwood Extended*, zoned RE. It contains a single-family dwelling fronting south onto 115th St. S.

Tests and Standard for Granting Variance. Oklahoma State Statutes Title 11 Section 44.107 and Bixby Zoning Code Section 11-4-8.A and .C together provide the following generalized tests and standards for the granting of Variance:

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 subject property is located within an RE Residential Estate District. Zoning Code Section 11-7B-4.A.1 Table 3 requires minimum setbacks as follows: 35' front yard, 25' rear yard, and 15' for both side yards. The existing house appears to be nonconforming, having a little more than a 25' front yard setback, according to the Applicant. Zoning Code Section 11-11-6 prohibits the expansion of structurally nonconforming buildings. The side and rear yard setbacks appear to be in order.

The Applicant has submitted a Building Permit application (# 20107) proposing to add a two-car garage and a patio onto the rear of the house. Due to the structural nonconformity, the house is presently ineligible for expansion, as such would increase the nonconformity by extending the life of a nonconforming structure. Therefore, the Applicant requested a Variance from the 35' front yard setback in the RE district. The exact distance between the front of the house and the front lot line is not known; per the "Architectural Site Plan," which the Applicant's building contractor stated on June 25, 2013 was based on a Mortgage Inspection Plat, and appears to reflect a previous building addition, the house is just beyond the 25' Building Line established by the plat of *Amended Southwood Extended.* Based on a rough estimate of relative proportions, it appears to be a few feet beyond the 25' Building Line, estimated for purposes of this Staff Report at 27'.

Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. In an attached narrative, the Applicant makes certain that the subject property and its *Condition or Situation is Peculiar, Extraordinary, and/or Exceptional.* The claims appear to be modeled off of claims made by Staff in a proximate, recent, and nearly identical Variance application, BBOA-530, the report for which Staff provided this Applicant for this purpose. As much of the language appears to have been copied/pasted, some of it is not entirely relevant to this application as much as it was for BBOA-530. Staff will not repeat it here, but the following claims made by Staff are similar to the same Staff made for BBOA-530, and thus, those in the attached narrative.

According to the Tulsa County Assessor's records, the house was built in 1968. The City of Bixby did not adopt a Zoning ordinance until circa the original late 1960s or early 1970s Zoning Ordinance # 234 (or possibly an earlier ordinance), but certainly by the April 02, 1974 Zoning Ordinance # 272.

Information is not readily available that would allow for the determination of (1) when this area was annexed by the City of Bixby and (2) made subject to 35' front yard setback from a Zoning Ordinance, (3) if any such was then in existence. It is assumed that the house on the subject property was built in conformance to the (private) Building Lines established on the plat of *Amended Southwood Extended*, and became legally nonconforming at the point at which it became subject to the RE district's 35' front yard Zoning setback, which was likely shortly after construction.

Zoning Code Section 11-8-9.D provides a certain exception for situations where there are existing, [legally-nonconforming] homes on the block which encroach on front yard Zoning setback, as is the case in this application. Said Section provides:

"D. If the proposed building is to be located within two hundred feet (200') of an encroaching building on one side, but not both sides, and there are no intervening buildings, the front yard or building setback shall be the average of the otherwise required front yard or setback and the setback of the nearest front corner of the encroaching building."

This situation applies to the present case, but the exception would not provide any relief, as the house on the lot abutting to the west, per GIS rough measurements, has an approximately equal setback from 115th St. S. The average between a 27' setback and the otherwise-applicable 35'

setback tied to 91st E. Ave. would be 31'. This condition or circumstance, stemming from its location at the street intersection, is unique relative to the typical lot in the RE district.

The subject property may be determined to have *Peculiar, Extraordinary, or Exceptional Conditions or Circumstances* by virtue of the combination of the following facts:

- First and foremost, the subject property is unique in that it is disadvantaged due to being a corner lot. If it were an interior lot, the house would likely be conforming as to front yard setback due to the exception provided in Zoning Code Section 11-8-9.D.
- According to an inspection of the plats, the *Amended Southwood Extended* subdivision was platted on or around December 30, 1966, presumably in unincorporated Tulsa County and subsequently annexed by Bixby.
- The plat of *Amended Southwood Extended* only requires a 25' front-yard setback. Approval of the Variance would not conflict with the setbacks as established by the plat.
- Per County Assessor's records, the house on the subject property was constructed in 1968.
- The City of Bixby did not adopt a Zoning ordinance until circa the original 1974 Zoning Ordinance # 272.
- As noted elsewhere in this report, a number of the dwellings in the immediate area appear to also encroach the 35' Zoning setback.
- All the other dwellings in the immediate area appear to have been built in the same time frame, late 1960s and early 1970s, per Tulsa County Assessor's records, and so would also appear to be legally nonconforming if encroaching the 35' setback.

Unnecessary Hardship. The Applicant claims that an unnecessary hardship would be caused by the literal enforcement of the Zoning Code because "...The property owners desire to improve the existing standard of the dwelling house and its appurtenances by expanding to the existing two (2)-car garage and adding a patio cover. Said improvements will transform the older house into a more contemporaneous property in keeping with newer homes. The [current] code will prevent such improvements that may prove detrimental to the owners. The current code would prevent an add-on which would otherwise be appropriate."

As claimed by the Applicant, the restriction from adding onto the subject property house 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 "All the houses in the immediate area encroach on the new setback." Per GIS and aerial data, it appears a large number of houses in the immediate area, defined here as adjacent to or across the street from the subject property, but not quite all of them. The Applicant also claims, "that the proposed expansion would in fact enhance the existing property values, the overall appeal of the neighborhood and [contribute] to its unique attributes."

Of the several fundamental purposes for imposing front yard setback restrictions, the primary reasons are (1) so that future street and highway expansions will not require

condemnation/removal of the structure, and (2) for the sake of consistency of design, mode of placement, and orientation of structures (aesthetics).

East 115th Street South has a 50-foot-wide right-of-way, which meets current Bixby development standards for right-of-way width for the functional design of a minor local residential street. Neither the adopted Comprehensive Plan nor the TMAPC Major Street and Highway Plan designate it as a Major Street, and there are no other known plans to widen the right-of-way, nor does there appear to be current or projected need to do so. The first and principal reason for the front yard setback is thus not an issue in this case.

The fact that the house is only approximately 27' from the front lot line does not appear to be unique to the subject property. Several other dwellings appear to encroach on, not only the Zoning Code's 35' front yard setback, but also the 25' (private) setback established by the plat of *Amended Southwood Extended.*

Also, the proposed building addition would be in the rear of the dwelling, and not in the same direction as the encroachment (front yard). This could effectively "balance out" the appearance of the structure in respect to the lot, improving the proportionality of this dynamic from an aesthetic standpoint.

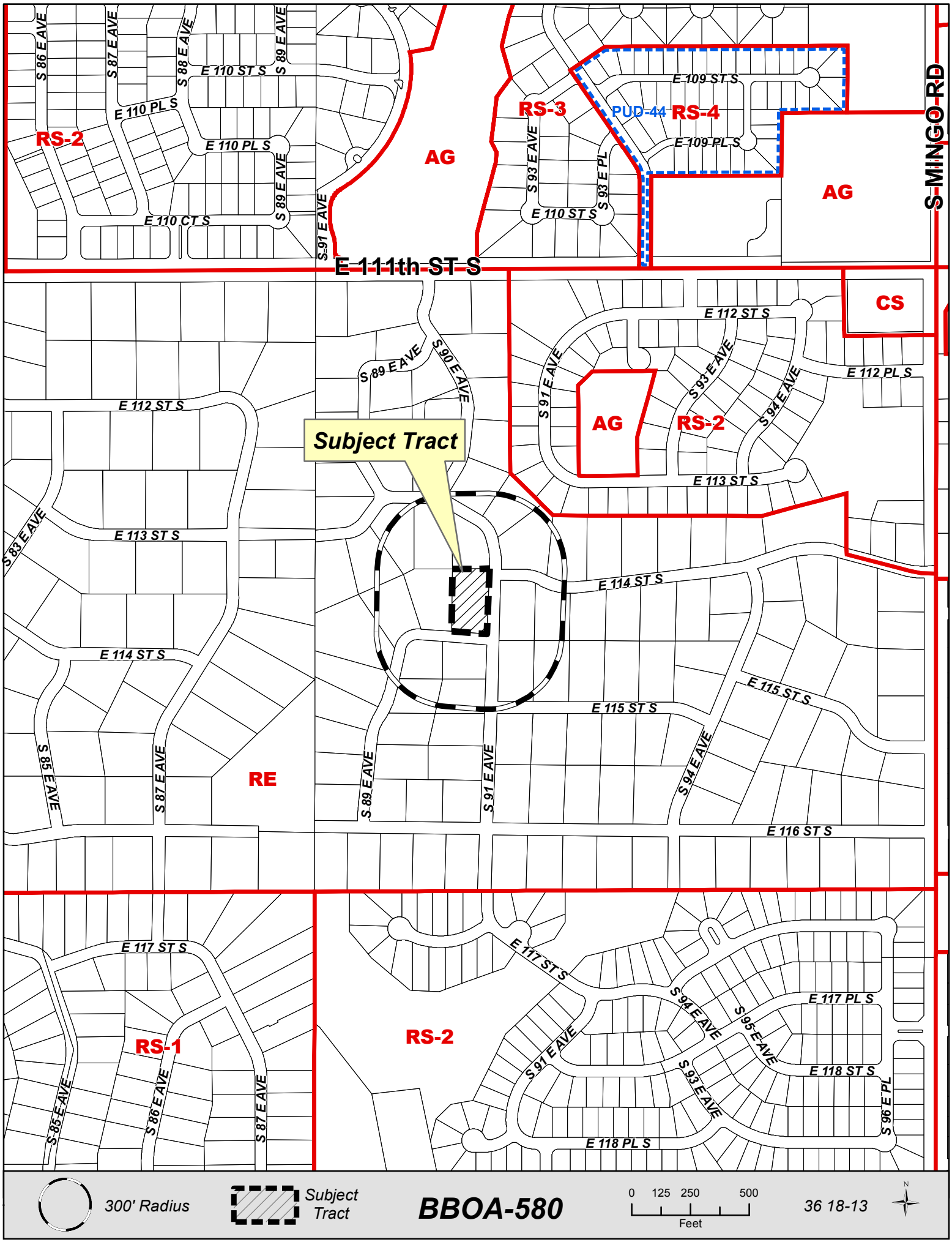
Further, research of area case precedents indicate there have been other houses built in the surrounding neighborhood which encroached on Zoning setbacks, and all were granted Variances. BBOA-530 appears most relevant, due to proximity, recentness, and virtually identical nature and circumstances.

Finally, Zoning Code Section 11-11-5.A provides exceptions to certain bulk and area standards for subdivisions platted prior to April 02, 1974. Although the subject property qualifies as a lot platted prior to April 02, 1974, this relief does not specifically provide an exception for the front yard setback situation, but does demonstrate legislative intent to provide flexibility for older, nonconforming subdivisions and lots.

Recognizing the setbacks of existing structures in the immediate area, and the visual/aesthetic conditions this presents, and for all the other reasons set forth above, Staff believes that that approval of the requested Variance would *Not Cause Substantial Detriment to the Public Good or Impair the Purposes, Spirit and Intent of the Zoning Code or the Comprehensive Plan.*

Finding of Minimum Necessary. Recognizing the house on the subject property lacks approximately 8' of setback, a Variance of approximately 8' would appear to be the *Minimum Necessary to Alleviate the Unnecessary Hardship.*

Staff Recommendation. If the Board agrees with Staff that the above-set forth arguments are adequate for the justification of Variance in accordance with the tests and standards provided in State Statutes and the Bixby Zoning Code, Staff recommends Approval.


S 86 E AVE
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S 89 E AVE
E 110 ST S
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E 110 CT S
RS-2
AG
RS-3
PUD-44
RS-4
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E 109 PL S
S 93 E AVE
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S 91 E AVE
E 111th ST S
S MINGO RD
CS
E 112 ST S
E 112 PL S
S 94 E AVE
E 113 ST S
S 83 E AVE
E 114 ST S
Subject Tract
S 89 E AVE
S 90 E AVE
E 115 ST S
S 85 E AVE
S 87 E AVE
RE
S 91 E AVE
S 94 E AVE
E 116 ST S
E 117 ST S
E 117 PL S
S 95 E AVE
E 118 ST S
E 118 PL S
S 96 E PL
RS-1
300' Radius
Subject Tract
BBOA-580
0 125 250 500
Feet
36 18-13
N

City of Bixby
Board of Adjustment Application

Applicant: Dr. Richard Stephens
Address: 8933 East 115th Street So, Bixby OK. 74008
Telephone: _____ Cell Phone: 918-706-1263 Email: _____

Property Owner: Dr. Richard Stephens If different from Applicant, does owner consent? ____
Property Address: 8933 East 115 Street So. Bixby OK. 74008
Existing Zoning: RE Existing Use: Dwelling House Use Unit #: _____
Proposed Use: Residential Dwelling House

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

Lot 6, Block 5, Southwood Extended

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

If Applicant is other than Owner, indicate interest: Owner / Applicant

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?

See Attachment

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

See Attachment

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.

See Attachment

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

See Attachment

Last revised 11/08/2012

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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.

See Attachments.

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: For. Richard Stephens By Duane Higgins Date: May 30, 2013

APPLICANT – DO NOT WRITE BELOW THIS LINE

BBOA-580 Date Received 05/31/2013 Received By Enyart 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: _____

Staff Rec. _____ Roll Call: _____

Last revised 11/08/2012

Attachment to page 1 of 2, Item a." The literal enforcement of the Zoning Code creates an <u>Unnecessary Hardship</u>".

The subject property is located within an RE Residential Estate District. Zoning Code Section 11-7B4.A.1 Table 3 requires minimum setbacks as follows: 35' front yard, 25' rear yard and 15" fir both side yards. The existing house appears to be nonconforming having only 25' Front Yard Setback according to the submitted Mortgage Inspection Plat. Zoning Code Section11-11-6 prohibits the expansion of structurally non-conforming dwellings. The side and rear yards appear to be in order.

The applicant has submitted a Building Permit proposing to add onto the side of the existing house/garage. Due to the structural nonconformity, the house is presently ineligible for expansion, Therefore the applicant request a Variance from the existing code that prohibits expansion thereto.

There is no standing remedy provided to the property owner except for a Variance allowing for expansion of the property thereto.

The property owners desire to improve the existing standard of the dwelling house and its appurtenances by expanding to the existing two (2)-car garage and adding a patio cover. Said improvements will transform the older house into a more contemporaneous property in keeping with newer homes.

The currant code will prevent such improvements that may prove to be detrimental to the owners.

The current code would prevent an add-on which would otherwise be appropriate.

Attachment to page 1 of 2, Item b. "<u>What makes your property peculiar, extraordinary, or exceptional as compared to other properties in the same district?</u>"

The applicant claims that the subject property and its condition or situation is Peculiar, extraordinary, and/or Exceptional by stating.

The house was built according to the original Zoning ordinance, before the City of Bixby adopted a Zoning ordinance changing the front yard setback from 25' to 35', as well as a side yard/ street side setback from 25' to 15'.

The applicable Zoning ordinance #272 was originated in 1974, well after the subject dwelling was originally built.

Information is not readily available that would allow for the determination of (1) when this area was annexed by the City of Bixby and (2) made subject to 35' front yard setback from 25' from a Zoning Ordinance, (3) if any such was in existence. It is presumed that the subject house was built in conformance to the (private) Building Lines established on the plat of the Amended Southwood Extended, and became [legally nonconforming] at that point at which it became subject to the RE district's 35' setback.

Zoning Code Section 11-8-9.D provides a *certain exception* for situations where there are existing, [legally –nonconforming] homes on the block which encroach on front yard Zoning setback, as is the case in this application.

Additionally this is a corner lot and distances between adjacent properties presents a peculiar, extraordinary, and exceptional situation for the owners desire to expand the [legally-nonconforming] structure.

The original plat of Amended Southwood Extended only requires a 25' front-yard setback. The approval of the Variance must have considered that such variance would not conflict with setbacks as established by the original plat.

Noted in previous reports, all the dwelling in the immediate area appear to encroach on the 35' Zoning setback.

Attachment to page 1 of 2, Item c. "<u>Finding of No Substantial Detriment or Impairment</u>".

The applicant claims that the requested Variance would not cause Substantial Detriment to the Public Good or Impair the purpose, spirit and intent of the Zoning Code or the Comprehensive Plan because "All the houses in the immediate area encroach on the new setback".

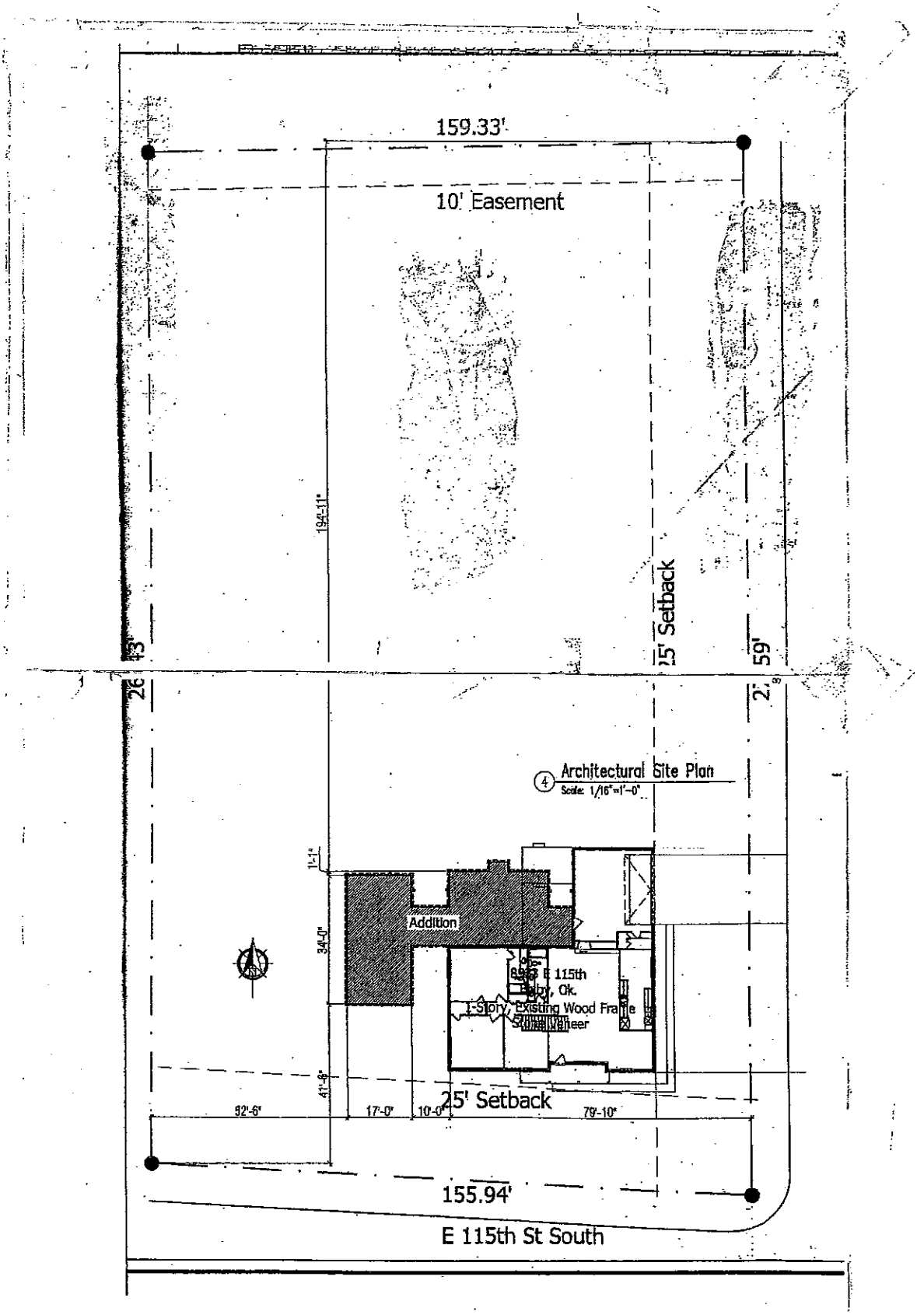
The applicant also contends that the proposed expansion would in fact enhance the existing property values, the overall appeal of the neighborhood and contributes to its unique attributes.

Attachment to page 1 of 2, Item d. "Explain why the Variance would be the minimum necessary to alleviate the necessary hardship".

The applicant claims that an unnecessary hardship would be caused by the literal enforcement of the Zoning Code "[It would] prevent an add-on which would otherwise be appropriate.

There are no other remedies available except for that of a Variance and in keeping with the spirit and intent of Zoning Code Section 11-8-9.D providing a certain exception for [legal nonconforming] homes.

A Variance would be the Minimum Necessary.


159.33'
10' Easement
194'-11"
25' Setback
59'
26'-3"
2'-8"
Architectural Site Plan
Scale: 1/16"=1'-0"
1'-1"
Addition
34'-0"
1-Story, Existing Wood Frame
41'-8"
25' Setback
52'-6"
17'-0"
10'-0"
79'-10"
155.94'
E 115th St South

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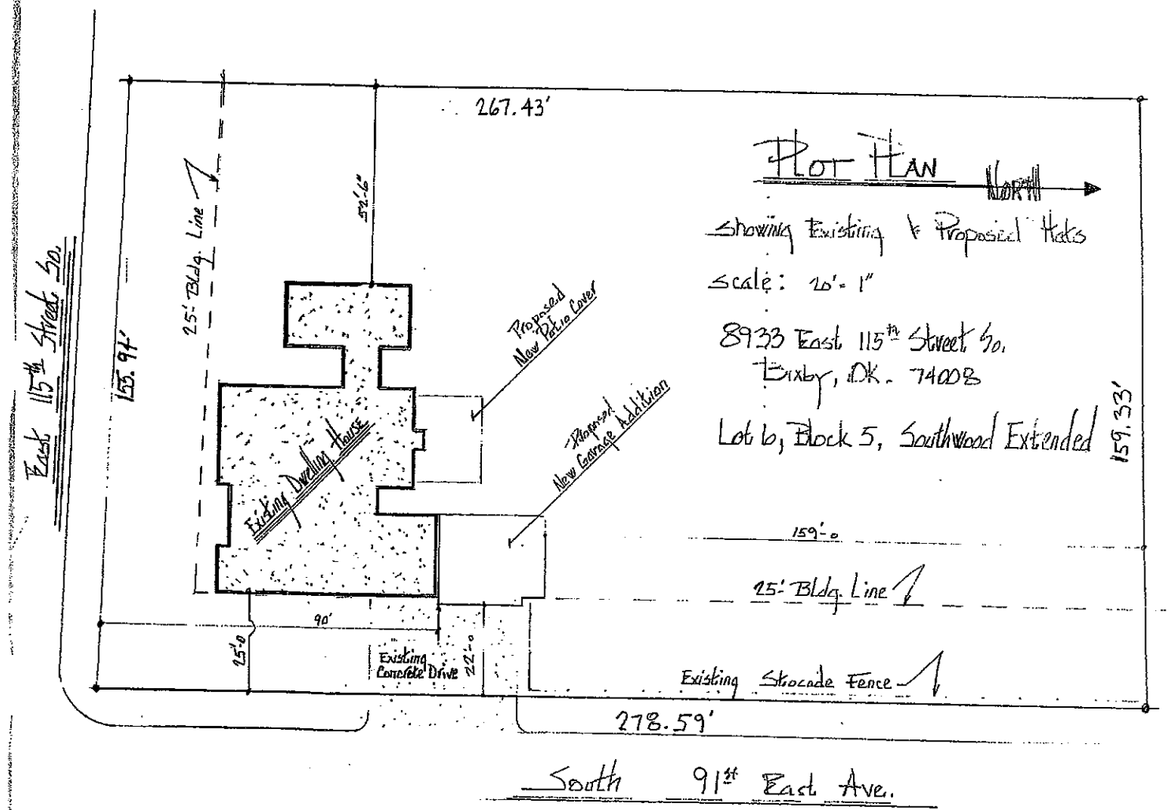
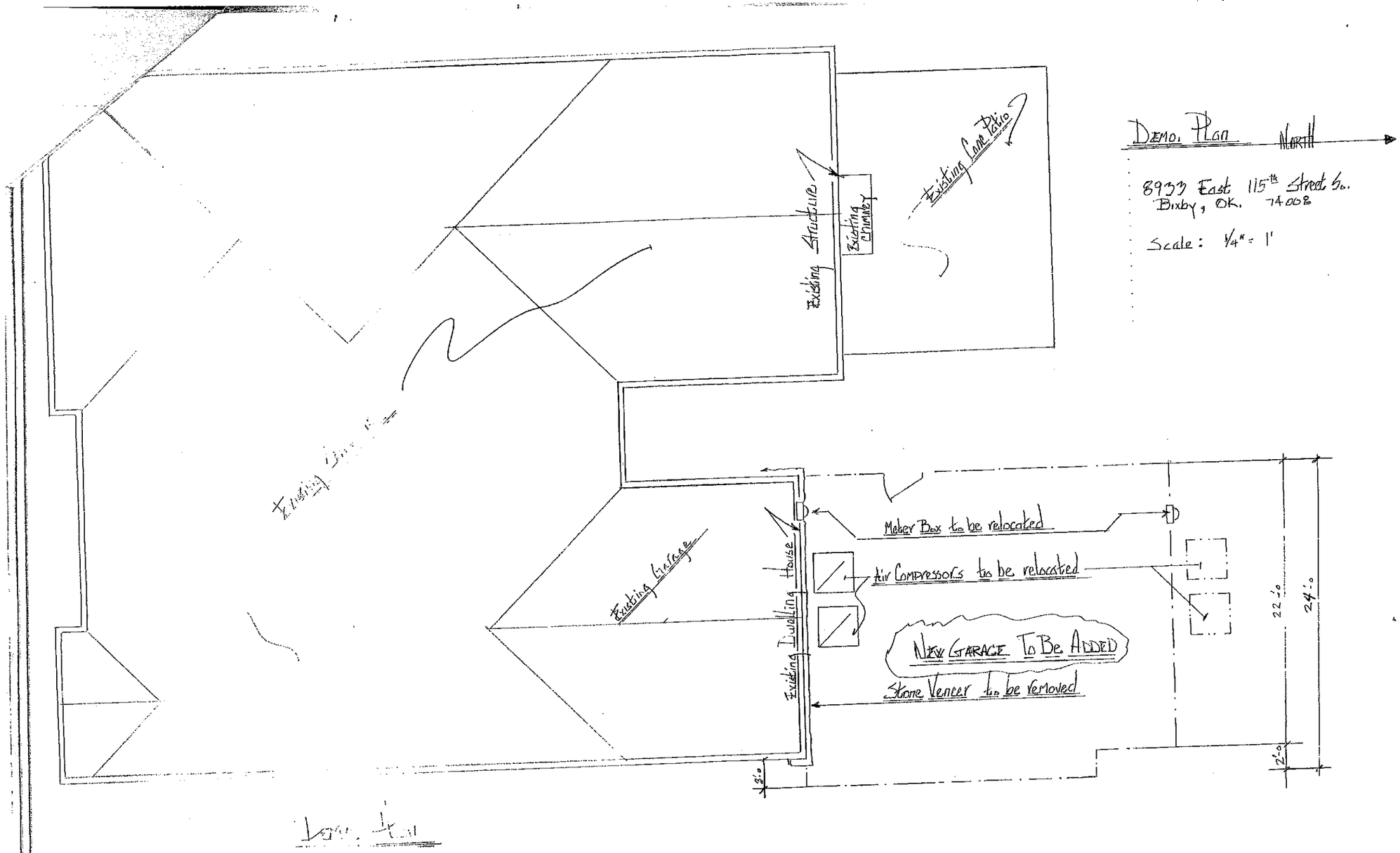
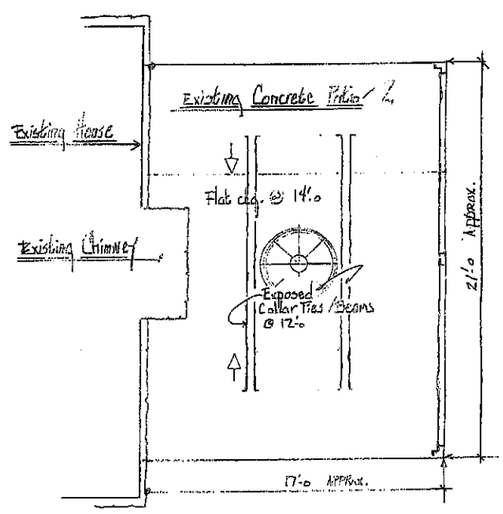

Plot Plan
North
Showing Existing & Proposed Adds
Scale: 20' = 1"
8933 East 115th Street So.
Bixby, OK. 74008
Lot 6, Block 5, Southwood Extended
267.43'
159.33'
East 115th Street So.
155.97'
25' Bldg. Line
52'-6"
Proposed New Patio Cover
Proposed New Garage Addition
Existing Dwelling House
159'-0
25' Bldg. Line
90'
25'-0
Existing Concrete Drive
22'-0
Existing Stockade Fence
278.59'
South 91st East Ave.


Demo. Plan
North
8933 East 115th Street So.
Bixby, OK. 74008
Scale: 1/4" = 1'
Existing Concrete Patio
Existing Structure
Existing Chimney
Existing Garage
Existing House
Meter Box to be relocated
Air Compressors to be relocated
New Garage To Be Added
Stone Veneer to be removed
22'-0
24'-0
2'-0
3'-0

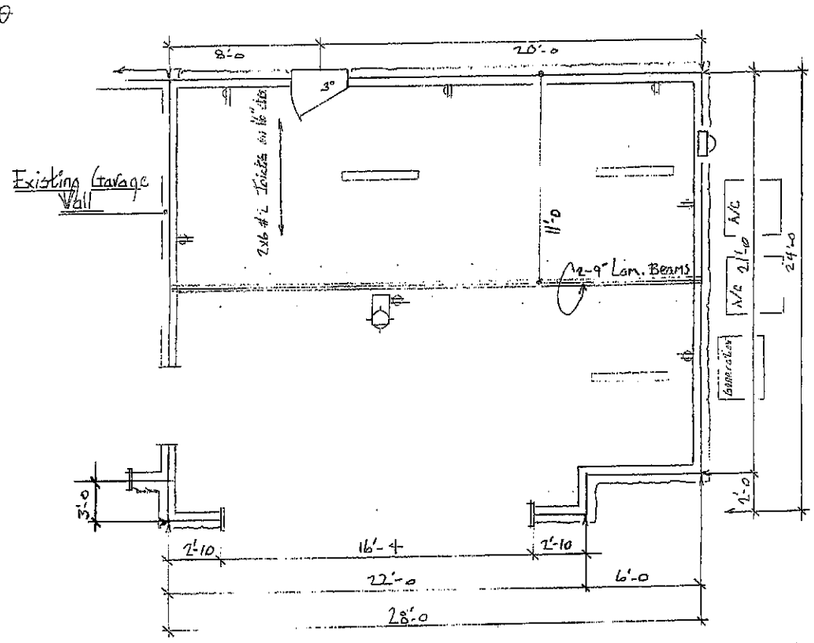


Floor Plan

Garage & Patio Cover Addition

8933 East 115th Street So.
Bixby, OK. 74008

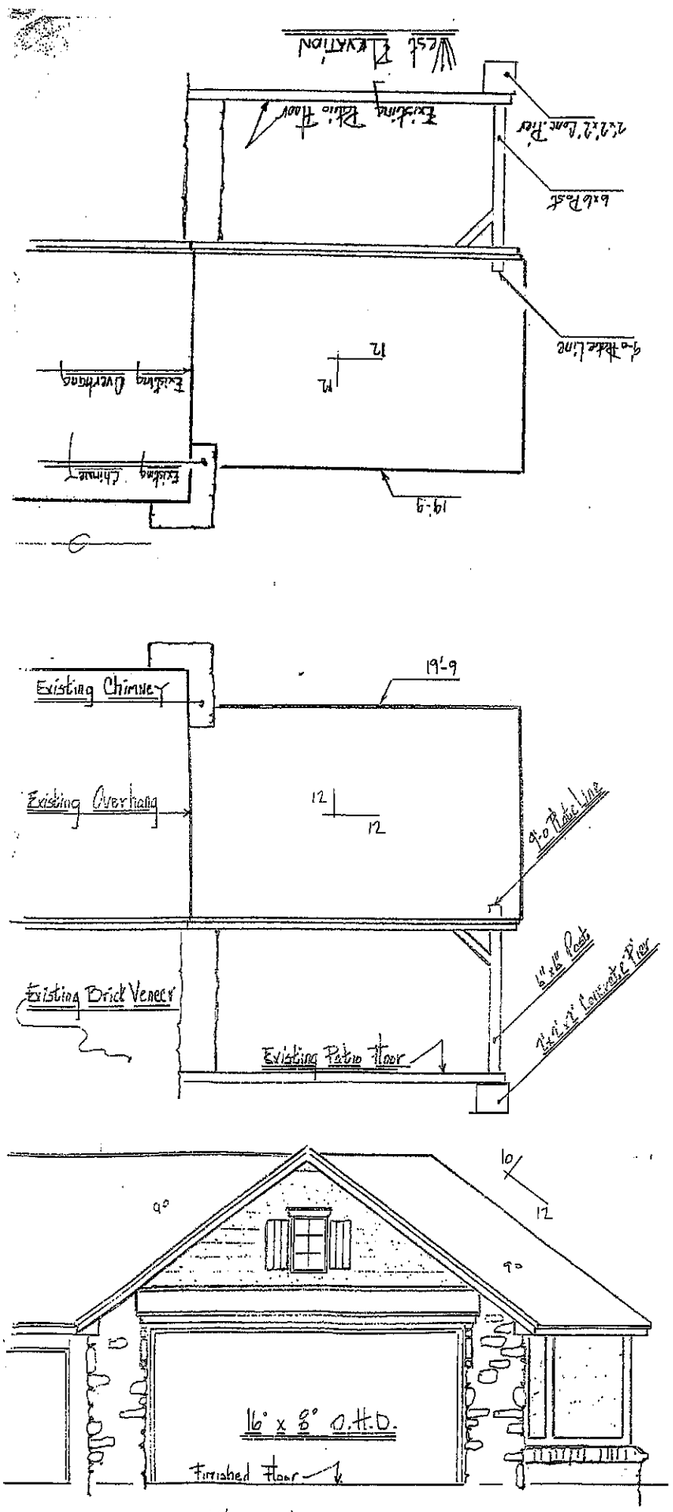
Scale: 1/4" = 1'



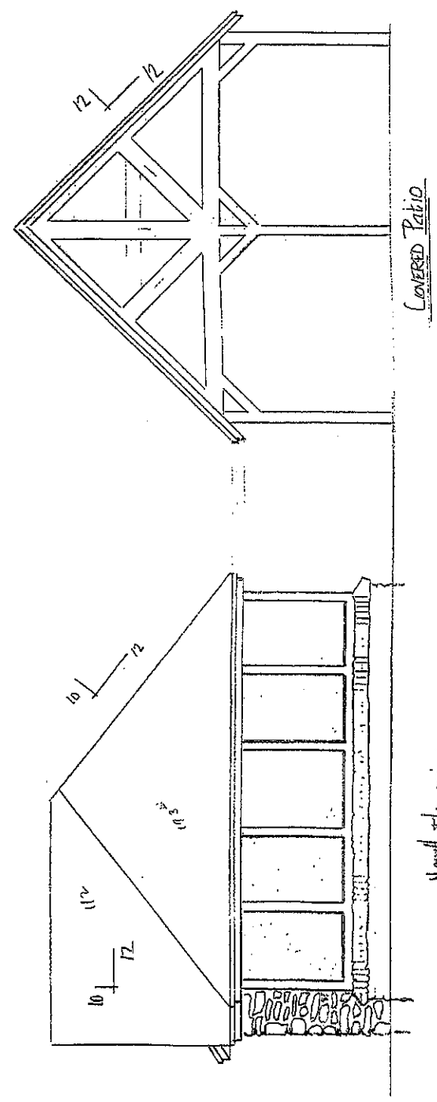
Elevations Plan

Scale: 1/4" = 1'

8939 East 115th Street So.
Bixby, Ok. 74008



West Elevation



North Elevation