

**MINUTES
BIXBY BOARD OF ADJUSTMENT
BIXBY CITY HALL, COUNCIL CHAMBERS
7:00 PM, JANUARY 07, 2008**

STAFF PRESENT:

Erik Enyart, AICP, City Planner
Deborah Forbes, Asst. City Planner

ATTENDING:

See attached Sign-in Sheet

CALL TO ORDER

Meeting called to order by Chair Jeff Wilson at 7:00 PM.

ROLL CALL

Members Present: Jeff Wilson, Darrell Mullins, Murray King, Lonnie Jeffries
Members Absent: Dave Hill

Erik Enyart apologized and stated that all of the agenda packets, except for his, appeared to be missing every other page. Mr. Enyart handed out copies of the entire staff reports for the three cases to the Board members prior to the meeting.

Approval of Minutes for December 03, 2007

Erik Enyart stated that, recognizing that the Board had not had opportunity to review the entire Minutes, Staff would recommend that the consideration for approval be Continued to the February regular meeting.

Jeff Wilson made a MOTION to Continue consideration for approval of the Minutes of December 03, 2007 to the February 04, 2008 regular meeting. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

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

NEW BUSINESS:

1. **BBOA-468 – Robert F. Canada.** Discussion and possible action to approve a Variance from Zoning Code Section 11-7B-3.B.1.b to permit the placement of an accessory building in the side yard on a property in the RE Residential Estate District.
Property Located: Lot 3, Block 5, Southwood Extended Amended, 11275 S. 89th E. Ave.
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Chair Jeff Wilson introduced the item and called on Erik Enyart for the staff report and recommendation. Mr. Enyart summarized the staff report as follows:

- LOCATION: – 11275 S. 89th E. Ave.
– Lot 3, Block 5, Southwood Extended Amended
- LOT SIZE: 38,111 square feet (approximately 0.875 acres)
- ZONING: RE Residential Estate District
- REQUEST: Variance from Zoning Code Section 11-7B-3.B.1.b to permit the placement of an accessory building in the side yard on a property in the RE Residential Estate District.
- SURROUNDING ZONING AND LAND USE: RE; Single-family residential in Southwood Extended Amended.
- COMPREHENSIVE PLAN: Low Intensity + [Existing] Residential Area + Planned Community Trail
- PREVIOUS/RELATED CASES:
- RELEVANT AREA CASE HISTORY:
- ANALYSIS:

Property Conditions and Nature of Variance. The Applicant is seeking Variance approval to be permitted to locate an accessory building in the west side yard of the dwelling, rather than the rear yard as otherwise allowed.

The subject property is bordered on the north and partially to the west by 113th St. S., and on the east and south by an upstream tributary of Fry Creek. There is a significant elevation change from the north/front part of the property which abuts 113th St. S. (and contains the dwelling) to the southeast/back part of the property. In other words, the elevation ‘falls off’ to the south and east to the creek.

The subject property is an atypically-configured lot, which is wider to the north along the street frontage and narrows to the south and east. Additionally, the dwelling faces to the west-northwest, which restricts the rear yard area and so makes locating an accessory building difficult.

Per aerial data and a survey dated 08/15/2006, there is an inground pool and hot tub occupying the part of the rear yard immediately east of the dwelling, and there is a 10’ utility easement along the east line of the lot, rendering these areas unavailable for an accessory building.

The south and east sides of the property contain areas of 100-year floodplain, and the proposed accessory building triggered the Earth Change Permit requirement of Bixby Code. The City Engineer and City Council approved the Earth Change Permit, after the Applicant demonstrated (by undated survey by Jack Ramsey) that the accessory building would be relocated to the north/front part of the property and out of the 100-year floodplain.

Relocating the accessory building, as required by the City Engineer and City Council, caused conflict with the provision of the Zoning Code restricting the location of accessory buildings to the rear yards.

Based on all available information, due to the shape of the lot and all of the spatial constraints of the property, it appears that the most suitable and perhaps only area available for the proposed accessory building is the west side yard, where it is now proposed to be located. Therefore, to permit an otherwise allowable accessory building, a Variance is necessary.

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.

Staff believes that the subject property has extraordinary or exceptional conditions or circumstances which are peculiar to the subject property and which would cause unnecessary hardship by virtue of:

1. As described in more detail above, the allowable area for the location of the accessory building, the rear yard, is rendered unavailable/unbuildable due to the combination of factors: the dramatic elevation changes, the atypical configuration of the lot, the orientation

of the dwelling on the lot and reduced rear yard area thereby caused, the location of the inground pool and hot tub, and the 100-year Floodplain, which, together with

2. *The City Engineer and City Council Earth Change Permit approval requiring the relocation of the accessory building out of the 100-year floodplain,*
3. *Would unnecessarily deprive the Applicant of the right to construct an otherwise permissible accessory building, and*
4. *Of the several fundamental purposes for imposing restrictions on the placement of primary and accessory buildings, the primary reason is for the sake of consistency of design, mode of placement, and orientation of structures (aesthetics). The subject property is relatively large, and so an accessory building of permitted size would not be as significant a feature as it would were the lot smaller. Additionally, due to the curve of the street and location of the accessory building in relation to the principal dwelling and other structures, the accessory building should not be so aesthetically unappealing.*

Also for these reasons, 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 and that the Variance would 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.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item.

Applicant Bob Canada 11275 S. 89th E. Ave. stated that he has spoken to the neighbors and they are all in agreement with his request.

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

Chair Jeff Wilson asked if there were any further questions for the Applicant or Staff. After further discussion, Chair Jeff Wilson asked to entertain a Motion. Darrell Mullins made a MOTION to APPROVE BBOA-468 as recommended by Staff. Lonnie Jeffries SECONDED the Motion. Roll was called:

ROLL CALL:

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

2. **BBOA-469 – Mark Leggitt for Quail Flats Properties, LP.** Discussion and possible action to approve a Variance from the Zoning Code Section 11-9-21.E.2 to be permitted to exceed maximum display surface area standards for a Use Unit 21 wall/canopy sign for a property in the CH Commercial High Intensity District.
Property Located: 15035 S. Memorial Dr.

Chair Jeff Wilson introduced the item and called on Erik Enyart for the staff report and recommendation. Mr. Enyart stated that he had discovered that the agenda was mailed to property owners within 300' instead of the Public Notice as required, and so adequate Public

Notice had not been achieved. Mr. Enyart recommended this item be CONTINUED to the February regular meeting so adequate Public Notice could be achieved.

Chair Jeff Wilson made a MOTION to CONTINUE BBOA-469 to the February 04, 2008 regular meeting pending adequate Public Notice. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

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

- 3. **BBOA-470 – Ronald Kelley for First Equity Corp.** Discussion and possible action to approve (1) a Variance from Zoning Code Section 11-7I-5.A.1.a to be permitted to exceed maximum number of dwelling units per gross land area as per 11-7B-4.A.1, Table 3 and so allow a total lot yield of 69 lots from subject property, instead of 68 lots as otherwise permitted, and so also provide for 69 total lots in PUD 55, and (2) a Variance from the 20’ front yard setback per Zoning Code Section 11-7I-5.E in conjunction with Section 11-7B-4.A.1 Table 3, all in the RS-3 Residential Single Family District and RD Residential Duplex District with PUD 55.

Property Located: Part of Lots 3 & 4, Block 1, *Sitrin Center* (or *Sitrin Center Addition*); 14800-block of S. Sandusky / Yale Pl.

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:

- LOCATION: – 14800-block of S. Sandusky / Yale Pl.
– Between S. Yale Ave. and S. Sandusky Ave., north of 151st St. S.
– Part of Lots 3 & 4, Block 1, *Sitrin Center* (or *Sitrin Center Addition*)
- LOT SIZE: 13.13 acres, more or less
- ZONING: PUD 55, and RS-3 Residential Single Family District, with some RD Residential Duplex District
- REQUEST:
 - (1) Variance from Zoning Code Section 11-7I-5.A.1.a to be permitted to exceed maximum number of dwelling units per gross land area as per 11-7B-4.A.1, Table 3 and so allow a total lot yield of 69 lots from subject property, instead of 68 lots as otherwise permitted, and so also provide for 69 total lots in PUD 55, and
 - (2) Variance from the 20’ front yard setback per Zoning Code Section 11-7I-5.E in conjunction with Section 11-7B-4.A.1 Table 3.

SURROUNDING ZONING AND LAND USE:

- North: RS-3 and PUD 3; Single-family residential in *Falcon Ridge Estates II*
- South: RD, CS, and PUD 3; Vacant land in part of Lot 4, Block 1, *Sitrin Center* (or *Sitrin Center Addition*), owned by *Sitrin Petroleum Corporation of Tulsa*.
- East: RS-3/PUD 3 and RS-4/PUD 34; Residential and vacant residential lots in *The Auberge’* and *White Hawk Golf Villas*.
- West: RS-3/PUD 3 and IL/PUD 12; S. Sandusky / S. Yale Place and vacant land in part of Lots 3 and 5, Block 1, *Sitrin Center* (or *Sitrin Center Addition*), owned by *Sitrin Petroleum Corporation of Tulsa*.

COMPREHENSIVE PLAN: *Low Intensity + [Existing] Vacant, Agricultural, Rural Residences, and Open Land + Special District # 2.*

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

PUD 1 / BZ-86 – Request for PUD and RS-3, RD, RM-2, OL, OH, and CS zoning for approximately 600 acres (Sitrin Center, etc.) – Both Approved April 16, 1980 (Ord. 402 and 403); established underlying RS-3 and RD zoning of subject property.

PUD 3 – Replaced PUD 1 but retained underlying zoning (including RS-3 and RD on subject property) – Approved 10/04/1982 (Ord. 465).

PUD 55 – Request for PUD zoning approval, to replace PUD 3 for subject property – Approved by Planning Commission March 19, 2007 and by City Council on April 09, 2007 (Ord. 965).

PUD 55 – Village at Auberge’ – Minor Amendment # 1 – JR Donelson for First Equity Corporation – Request for Minor Amendment to PUD 55 to allow for 69 lots for subject property instead of 68 as otherwise permitted – Conditionally Approved by the Planning Commission December 17, 2007.

Preliminary and Final Plats of Village at Auberge’ – Request for (1) Preliminary Plat approval, (2) Final Plat approval, and (3) Modification/Waiver from the stub-out street requirement of Subdivision Regulations/City Code Section 12-3-2.C – All Conditionally Approved by the Planning Commission December 17, 2007 – City Council consideration pending January 14, 2008.

RELEVANT AREA CASE HISTORY:

BACKGROUND INFORMATION:

The original PUD proposed 68 lots total, the maximum permitted in accordance with Zoning Code Section 11-7I-5.A.1.a in conjunction with Section 11-7B-4.A.1 Table 3. According to the Developer’s Agent, the developer reduced the size of Reserve C (the second of two Reserves, and so is to be renamed Reserve B) to reclaim enough square footage to squeeze in one more lot. Therefore, the Applicant is requesting a Variance from Zoning Code Section 11-7I-5.A.1.a for the subject property to be permitted to yield 69 lots total.

Construction of the “Village at Auberge’ ” began pursuant to the approved PUD 55 and City approval of construction plans and Privately Financed Public Infrastructure (PFPI) agreements. On December 17, 2007, the Planning Commission approved the Preliminary and Final Plats and PUD Minor Amendment # 1 contingent upon the approval of BBOA-470.

ANALYSIS:

Property Conditions. The subject property is vacant land which is nearing completion of construction for the “Village at Auberge’ ” residential subdivision.

Nature of Variance. The Applicant is seeking a Variance from Zoning Code Section 11-7I-5.A.1.a to be permitted to exceed the maximum number of lots, 68, by one (1) lot.

Secondly, the Applicant is seeking a Variance from 11-7I-5.E in conjunction with Section 11-7B-4.A.1 Table 3 to be permitted to have 20’ front yard setbacks, instead of 25’ as required.

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.

Recognizing:

1. That it is not inconsistent with the Comprehensive Plan,
2. That it is substantially consistent with the original PUD in satisfaction of Zoning Code Section 11-7I-8.G,
3. That it is consistent with the Minor Amendment # 1 to PUD 55, as the Planning Commission conditionally approved December 17, 2007,
4. That the subject property contains approximately 0.6 acres of RD Residential Duplex zoning, which is intended to be a higher density/intensity district than RS-3, and
5. That the fundamental function of a PUD is to provide for greater flexibility in terms of bulk and area standards to accommodate a beneficial design, and

6. *That modern subdivision design trends have led to subdivision designs significantly reducing or restricting front yards altogether, Staff is supportive of a Variance as a Zoning mechanism to enable the subject property to yield a total of 69 lots, and a Variance to allow for 20' front yard setbacks, both of which Variances should otherwise be afforded by more flexible PUD provisions in the Zoning Code.*
Staff Recommendation. If the Board finds that the arguments presented in the application, and others that the Applicant may provide during public hearing and consideration of this case at the meeting, substantially meet the Variance tests and standards provided in State Statutes and the Bixby Zoning Code, Staff would recommend Approval.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. The Applicant was not present.

Chair Jeff Wilson clarified with the Board members that it was the Board's policy to Deny or Continue an application if the Applicant fails to present the case.

Chair Jeff Wilson asked if anyone else wished to speak on the item.

Craig LaForce of 4684 E. 145th Pl. S. stated he has lived behind the property in question for three (3) years. Mr. LaForce stated that the developer went from regular single-family homes to townhouse villas, and asserted that every time they scrunch down the size of the lots and homes, it reduces the property values [of the area]. Mr. LaForce expressed concern and complained about the manner of the development, including dramatic elevation changes, drainage concerns, damage to his fence, and loss of privacy. Mr. LaForce asked that the Board not allow the developer to further erode his property values.

Erik Enyart noted that continuing the application would set the developer's schedule behind. Darrell Mullins noted he was not sympathetic as the developer did not attend the meeting. Chair Jeff Wilson noted that the issues pertaining to lot sizes and other details were relevant to the application, and the developer should be present to respond to the issues.

Chair Jeff Wilson made a MOTION to CONTINUE BBOA-470 to the February 04, 2008 regular meeting, due to the Applicant's failure to present the application. Darrell Mullins SECONDED the Motion. Roll was called:

ROLL CALL:

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

OLD BUSINESS:

4. BBOA-464 – Carl & Betty Davis. Discussion and possible action to approve a Variance from the Zoning Code Sections 11-8-1 to allow for the construction of a duplex and Section 11-7B-4.A.a, Table 3, to reduce front and rear yard building setbacks in the RT Residential Townhouse District.
Property Located: 221 and 223 E. Breckenridge Ave.

Chair Jeff Wilson asked Betty Davis for what agenda item she was attending.

Erik Enyart noted that the Davis' application per BBOA-464 was Tabled at the November 05, 2007 regular meeting, as it had already been Denied as per BBOA-456, and the Board directed Staff to seek the opinion of the City Attorney as to the legality and appropriateness of considering an application for the same action when once denied, as they considered that there is a finality to the Board's actions. Mr. Enyart stated that he contacted the City Attorney, who stated that, if one of the Board members made a Motion to allow the case to be reconsidered, and the Board adopted that Motion, it could be done.

Lonnie Jeffries made a MOTION to APPROVE the Reconsideration of BBOA-464. Jeff Wilson SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: King, Jefferies & Wilson
NAY: Mullins
ABSTAIN: None.
MOTION CARRIED: 3:1:0

Erik Enyart stated that the application would be re-advertised for the February 04, 2008 regular meeting.

ADJOURNMENT

There being no further business to discuss, Lonnie Jeffries made a MOTION to ADJOURN. Jeff Wilson SECONDED the Motion. Roll was called:

ROLL CALL:

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

Meeting adjourned at 7:32 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary