

**MINUTES
BIXBY BOARD OF ADJUSTMENT
BIXBY CITY HALL, COUNCIL CHAMBERS
7:00 PM, February 04, 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, Dave Hill
Members Absent: None

MINUTES

1. Approval of Minutes for January 07, 2008

Chair Jeff Wilson made a MOTION to APPROVE the Minutes of January 07, 2008. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: King, Mullins, Jefferies, & Wilson
NAY: None.
ABSTAIN: Hill.
MOTION CARRIED: 4:0:1

2. Approval of Minutes for December 03, 2007

Murray King made a MOTION to APPROVE the Minutes of December 03, 2007. Chair Jeff Wilson SECONDED the Motion. Roll was called:

ROLL CALL:

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

Chair Jeff Wilson stated that, for the sake of time and those attending, Agenda Item 3, BBOA-464, would be moved to the end of the agenda.

OLD BUSINESS:

4. (Continued from January 07, 2008)

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 summarized the staff report as follows:

LOCATION: – 15035 S. Memorial Dr.
– Northeast corner of the intersection of 151st St. S. & Memorial Dr.
LOT SIZE: Approximately 0.64 acres
ZONING: CH Commercial High Intensity District
REQUEST: 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.

SURROUNDING ZONING AND LAND USE:

North: CH & CG; The Bixby Car Wash and the abandoned railroad right-of-way.
South: (Across 151st St. S.) CG & CH; The Bixby Muffler auto repair shop, the Bixby Flower Basket flower shop, and the QuikTrip gas station to the southwest.
East: CH & CG; Various automotive and small engine repair shops along 151st St. S.
West: (Across Memorial Dr.) CS; Commercial, Sonic Drive-In and O'Reilly Auto Parts.

COMPREHENSIVE PLAN: Corridor + Development Sensitive + [Existing] Commercial Area + Planned Regional Trail + Special District # 1.

PREVIOUS/RELATED CASES: (not a complete list)

BZ-51 – Tri-Kay Development, Inc. – Subject property included in that area requested for rezoning from CG to CH – Approved August 17, 1976 (Ord. 317) and August 07, 1978 (Ord. 358).

BL-146 – Michael D. Smith – Subject property requested for Lot-Split approval – Approved by PC May 15, 1989.

AC-08-05-03 – Subject property requested for Architectural Committee approval to remodel building – Approved April 18, 2005.

AC-07-05-04, AC-07-05-05, & AC-07-05-06 – Subject property requested for Architectural Committee approval of (-04) Replace signage facing on the existing ground/pole sign on the Memorial Dr. frontage, (-05) New ground/pole sign on the 151st St. S. frontage, and (-06) Wall signage – (-04) Approved, (-05) Denied, and (-06) Approved, all on July 18, 2005.

AC-08-05-03 – Subject property requested for Architectural Committee approval of a new ground/pole sign (same as AC-07-05-05 but possibly located slightly differently) – Denied September 22, 2005.

RELEVANT AREA CASE HISTORY:

BACKGROUND INFORMATION:

Staff discovered that 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. The Board Continued this application from the January 07, 2008 regular meeting pending proper Public Notice. Staff's recommendation has not changed.

ANALYSIS:

Property Conditions. The subject property is composed of three (3) unplatted tracts and contains a commercial building presently used for the AT&T Cellular World wireless/cellular store. The property contains a ground sign towards the northwest corner of the frontage of the property, and the building contains an awning/wall sign extending around the north, west, and south perimeters of the roof line.

Nature of Variance. The Applicant is seeking Variance approval to be permitted to replace the entire awning/wall signage currently displaying “Cingular” with “AT&T”^{*} signage (wording, corporate colors, and corporate logos), which would exceed the maximum display surface area of Zoning Code Section 11-9-21.E.2:

“2. Wall and canopy signs shall not exceed an aggregate display surface area of three (3) square feet per each lineal foot of the building wall to which the signs are affixed. (Ord. 272, 4-2-1974)” (emphasis added).

Per AC-07-05-06, the original orange (Cingular corporate color) wall/awning sign structure was approved by the Architectural Committee on July 18, 2005, to be 60” = 5’ in height, after the demonstration that the lettering and logos, measured within the smallest possible and separate rectangular areas containing all of them, did not exceed the maximum display surface area restriction.

The wall/awning sign was determined to meet the square footage standard and was determined to not to be a roof sign by interpretation, per the Staff Report for AC-07-05-06, “The wall sign is on a canopy [awning] that will be constructed above the parapet. The sign square footage is within the ordinance if you do not count the entire canopy [awning]. It would look bad not to complete the canopy [awning] at least on two sides.”

Staff received a sign permit application around October 12, 2007, to replace the 5’ wall/awning signage with a new AT&T Cellular World signage (wording, orange and blue corporate colors, and corporate logos) with the same dimensions. Staff rejected the signage as it would exceed the maximum display surface area of Zoning Code Section 11-9-21.E.2. The height of the signage would have to be somewhat less than 3’ in height to meet the standard. On November 12, 2007, the Applicant submitted new plans for signage which did meet the standard, and the permits were approved, but the Applicant chose not to construct the permitted signage and seek a Variance instead.

The Bixby Zoning Code does not have a definition of ‘sign.’ In such cases, the common definition found in the dictionary should be used. The relevant part of the definition from the Merriam-Webster online dictionary is:

“2: a mark having a conventional meaning and used in place of words or to represent a complex notion”

The term ‘sign’ is broad and inclusive. To further define the term as it is commonly used in the context of Zoning Codes, Staff notes that the Tulsa City Zoning Code should provide for constructive illustration, as Bixby’s code was more or less originally modeled off of it. Tulsa Zoning Code Section 1800 provides as definition of ‘sign’:

“Sign: Any object, device, structure or part thereof used to advertise, identify, display or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination or projected images.

Signs as defined herein do not include the flag or emblem of any nation, organization of nations, state, city or any fraternal, religious or civic organizations; one corporate flag; works of art which in no way identify a product; temporary holiday decorations; or landscape features which display no words or symbols.” (emphasis added)

Staff has emphasized the relevant parts of the definition: ‘part thereof’ and ‘colors.’ Most definitions of ‘sign’ in the metropolitan area are substantially similar. The sign area includes the entire awning, which uses AT&T-branded colors, and not just separate rectangular parts of the awning containing lettering and logos.

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.

^{*} Cingular Wireless became AT&T in December of 2006.

- Variance would be Minimum Necessary.

Staff believes that the arguments presented in the application substantially meet the tests and standards for granting Variance. In particular, Staff notes that the existing square footage was lawfully permitted based on previous interpretation of the Zoning Code.

Staff Recommendation. If the Board agrees with Staff that the Applicant's arguments substantially meet the Variance 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 Mike Brewery of Chandler Signs, 3201 Manor Way, Dallas, TX, stated that his firm does a lot of work with AT&T corporation and that he also worked with the franchisee. Mr. Brewery described the details of the signage and presented pictures to the Board members, copies of which were in the agenda packet. Mr. Brewery stated that the original wall/awning sign was permitted within the zoning codes by the City of Bixby. Mr. Brewery stated that the new signage would be the same size as the existing, but with a different name ('AT&T') on it. Mr. Brewery indicated that a requirement to reduce the 'copy area' display surface area would be a hardship as it would require building a new sign structure, instead of simply refacing the existing structure. Mr. Brewery stated that, in approving this application, the City would not be sacrificing the integrity of its code or ordinance, as the sign had been up for two and a half (2 1/2) years.

Chair Jeff Wilson asked to entertain a Motion. Lonnie Jeffries made a MOTION to APPROVE BBOA-469. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

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

5. (Continued from January 07, 2008)

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 February 11, 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.

The Board of Adjustment Continued this case from the January 07, 2008 regular meeting for the Applicant's failure to present the application. Staff's recommendation has not changed.

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.

Ronald Kelley of First Equity Corporation and Westec Properties introduced himself as the developer of the "The Auberge' Village"¹ and stated that this was the second phase of the original development that was completely built and approved by the City of Bixby. Mr. Kelley stated that the new plan was to turn a Reserve into another lot for a home. Mr. Kelley stated that attorney Jeff Levinson had calculated the number of lots based on the total acreage of both additions, but that he died last March. Mr. Kelley stated that he had 'backed in' to figure what Mr. Levinson's original calculations were. Mr. Kelley stated that this application was passed to this meeting as there was a gentleman in *Falcon Ridge Estates II* who had expressed concerns about property values. Mr. Kelley stated that he was a Realtor. Mr. Kelley held papers and stated that he had a comprehensive market analysis and photos of comparable houses from the MLS listing system which demonstrated that the home values in this addition would be higher than those in *Falcon Ridge Estates II*, and that this addition would increase the values of the homes in the other existing additions. Mr. Kelley did not provide a copy of these documents to the Board. Mr. Kelley stated that this will be a gated community with private streets.

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

¹ The name of the subdivision, some time between Planning Commission approval of the Final Plat on 12/17/2007 and February 07, 2008, has been changed from "Village at Auberge" to "The Auberge' Village," as per email from JR Donelson on February 12, 2008.

stated that, about two (2) years ago, a Zoning notice went up on the property, and the new development was described as being similar to *Falcon Ridge Estates II*. Mr. LaForce stated that the developer had moved a hill from the south side of the property to the north side along his property line, and now the grade of that land was higher than his fence, which would allow lot owners to look straight down into his house. Mr. LaForce stated that he felt this would impact his property value. Mr. LaForce expressed concern over drainage. Mr. LaForce stated that the developer had put up a fence so that it pushed against his fence, and would like to have the fence removed from his property. Mr. LaForce asked that the Board consider the effect on his privacy and sale value of his house. Mr. LaForce presented photos of the alleged matters, including photos of the fence, which appeared to be constructed on his side of the property line, based on survey stakes depicted in the photo, which Mr. LaForce described in further detail.

JR Donelson described to the Board how the land was graded to allow water drainage to flow from the lots to the detention pond, as required by engineering. Mr. Donelson described how the silt fences, as required and enforced, control site erosion and drainage. The Board clarified with Mr. Donelson that the fence Mr. LaForce was talking about was not a silt fence.

Ronald Kelley stated that he wasn't aware of the alleged fence encroachment, and if it did encroach, he did not want it to either. Mr. Kelley stated that he used a fence contracting company to install the fence, and agreed to get the contractor to fix the problem and get an accurate survey. Mr. Kelley stated that he had not had any dirt brought into the site, and that he had purchased the subject property at the same time as *Falcon Ridge Estates II*.

Dave Hill asked about the location of the 69th lot in relation to Mr. LaForce's property. JR Donelson and Ronald Kelley provided a copy of the plat and discussed the location of the new lot caused by the reduction of the Reserve area along the west line of the addition, and Mr. LaForce indicated the location of his lot. Mr. Hill clarified that the new lot did not back up to Mr. LaForce's lot.

Ronald Kelley stated that the Reserve area in *Falcon Ridge Estates II* only served the detention needs of a few lots in *Falcon Ridge Estates II*, which he knew when it was installed and intended it that way in order to also serve the The Auberge' Village addition.

Chair Jeff Wilson asked Erik Enyart if there were any issues not addressed. Mr. Enyart replied that most of the issues seemed to have been addressed, but that the only one that he had heard that the Board may not have had adequate response to was the issue of property values. Mr. Enyart noted that Mr. Kelley had stated that he had a comprehensive market analysis, which the Board may be interested in looking at and discussing further.

Murray King clarified with Ron Kelley that there was no lot shrinking due to the 69th lot, because they were taking a Reserve area [that was not going to be a lot] and making a lot out of it.

The Board members noted that the purpose of the Board of Adjustment was to protect the existing citizens of the City, and to help those who appeal to the Board from harm by some [misapplied] rule.

Murray King noted that Ron Kelley had agreed to take care of the fence issue.

Erik Enyart noted, in regard to the Variance to allow a 20' front yard setback, that failure to approve the Variance would deprive the Applicant of that benefit which was conferred upon the property by the City Council in its approval of the PUD.

Ronald Kelley stated that he would have the fence issue fixed, as otherwise he would not be able to sell the lot with a title problem.

Chair Jeff Wilson made a MOTION to APPROVE BBOA-470, finding that the Variance met the requirements for the same as set forth in the City Planner's report and as set forth in the testimony during this hearing. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

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

OLD BUSINESS:

3. (Authorized for reconsideration January 07, 2008)
BBOA-464 – Carl & Betty Davis. Discussion and possible action to approve a Variance from Zoning Code 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.
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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: – 221 and 223 E. Breckenridge Ave.
– S. 64' of Lots 23:26, inclusive, Block 30, Midland Addition
LOT SIZE: 100' X 64' = 6,400 square feet (approximately 0.15 acres)
ZONING: RT Residential Townhouse District
REQUEST: (1) ~~Variance from the Zoning Code Section 11-8-1 to allow for the construction of a duplex on a nonconforming lot, and~~ (Approved 11/05/2007)
(2) Variance from Section 11-7B-4.A.a, Table 3, to reduce front and rear yard building setbacks in the RT Residential Townhouse District
SURROUNDING ZONING AND LAND USE:
North: RT & RM-1; Three (3) duplex units on 3 tracts fronting on Parker and Dawes
South: RS-3; Residential.
East: RS-3; Residential.
West: RS-3; Residential.
COMPREHENSIVE PLAN: Low Intensity + Existing Residential.
PREVIOUS/RELATED CASES: (not a complete list)
BZ-318 – Betty Davis: Subject property approved for rezoning from RS-3 to RT in October/November, 2006, Ordinance # 954.
BL-341 – Betty Davis: Subject property created by Lot-Split approved October 16, 2006.
BBOA-456 – Carl & Betty Davis – Request for Variance to reduce front and rear yard building setbacks in the RT Residential Townhouse District, Zoning Code Section 11-7B-4.A.1, Table 3 – Denied by the BOA 10/01/2007.
RELEVANT AREA CASE HISTORY: (not a complete list)

BZ-302 – Betty Davis: Property at the southwest corner of Parker and Dawes, addressed 222 and 226 E. Dawes, part of the north half of the block to the north of the subject property, approved for rezoning from RS-3 to RM-1 in March, 2004, Ordinance # 885.

BL-318 – Betty Davis: Property at the southwest corner of Parker and Dawes, addressed 222 and 226 E. Dawes, part of the north half of the block to the north of the subject property, approved for Lot-Split on 02/22/2005.

BACKGROUND INFORMATION:

Case History. Building permit applications for the two (2) units within the proposed duplex were received by planning staff on Monday, August 20, 2007, and were found to not comply with the bulk and area standards of the RT Residential Townhouse District.

Rear Yard Setback Variance. A duplex is a Use Unit 7, which is permitted by right in the RT district. The proposed duplex would front on Breckenridge, and together with the duplex constructed at 26 N. Parker on the N. 66' of Lots 23:26, inclusive, Block 30, Midland Addition, it would be a mirror image of the north half of this block, which the Applicant also owns, with one duplex building fronting on Dawes and one on Parker. This north half of the block was zoned RM-1 in March, 2004 per BZ-302 – Betty Davis, and approved for Lot-Split per BL-318 on February 22, 2005.

The duplex building would be approximately 40' front to back, and 53' wide from side to side. The property in question measures 100' from east to west along Breckenridge, and 64' from north to south along Parker.

The RT district requires a 20' front yard setback and a 20' rear yard setback. Front yard setbacks may be reduced based on a formula provided in the Zoning Code if other homes encroach on the setback, so the 15' front yard setback may be acceptable, based on the facts. However, the bigger problem is an approximately (64' – 40' building – 15' front setback =) 9' rear yard, which does not meet the 20' rear yard requirement.

To remedy this problem, the Applicant could:

- Re-orient the duplex to face Parker – the numbers should work out such that the building would fit and conform to setbacks. Front yard may be the same as the average of the two duplex units facing Parker; or
- Reduce the building depth from 40' as proposed to 29'; or
- Apply for a Variance to reduce the setbacks.

The Applicant chose the third method.

Section 11-8-1 Variance. This application is the same as was proposed per BBOA-456, which was denied by the Board on October 01, 2007. At that time, Staff was under the impression that the duplex could be constructed 'by right' if it were reoriented to front on Parker. However, a second reading of Zoning Code Sections 11-8-1 informed Staff that the Code would prohibit the construction of such a duplex when the lot does not conform to bulk and area requirements, and so construction of a duplex also required a Variance from § 11-8-1, which was approved per BBOA-464 on November 05, 2007.

Limitations on Re-Applications. The Applicant in BBOA-456 requested the opportunity to apply for the Variance a second time, and finding in the Zoning Code no prohibition or mandatory waiting periods for re-applications, Staff accepted this new application BBOA-464.

For the second part of BBOA-464, on November 05, 2007, the BOA took No Action and directed Staff to request of the City Attorney an opinion on whether or not the Board of Adjustment can consider an application for the same action when once denied, which may allow the application to return to the agenda after opinion has been rendered and new public notice has been made.

As reported by Staff at the regular meeting held January 07, 2008, Staff contacted the City Attorney and was informed that, in this case, in order for the Board of Adjustment to consider it, a "voting member" must make a Motion and get the Board to vote to allow for reconsideration. Staff so informed the Applicant, and the Applicant attended the January 07, 2008 meeting to seek reconsideration. The Board, by Motion, approved the Applicant's request for reconsideration; the case was readvertised to the Public, and returned to this February 04, 2008 agenda.

Area Drainage Concerns. During its consideration of BBOA-456 on October 01, 2007, and during its consideration of BBOA-464 on November 05, 2007, the Board heard testimony from two (2) neighboring property owners that the area suffers drainage problems on a neighborhood scale. Area drainage problems were used by protestants to urge the denial of BBOA-456. Staff recognizes that the area does have drainage issues, which need to be remedied by the City as funds are available and Capital Improvements plans provide, but it is not reasonable to prohibit the duplex use of a property

specifically approved for zoning to allow a duplex for area-wide drainage problems, which are beyond the control of the property owner. The proper recourse for correcting area drainage issues is by petition to the City Council.

This mode of discussion has allowed the focus to be removed from a question of aesthetics and building placement on the lot to a question of if the duplex should be constructed at all, which is a question already settled.

ANALYSIS:

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.

The subject property has *extraordinary or exceptional conditions or circumstances* which are *peculiar* to the subject property by virtue of (1) The zoning and subdivision approvals conferred upon it by BZ-318 and BL-341, both approved in 2006, and (2) Its *relatively narrow (64') depth*, which even at a 15' front yard setback, would restrict the building footprint area to 29' instead of a more common (and more preferable from quality of life and aesthetic standpoints) 40' as proposed.

Per Zoning Code Section 11-7B-4.A.1, Table 3, the minimum lot area required for a duplex in the RT district is 6,900 square feet, but the Lot-Split was approved by the Planning Commission creating the subject property of 6,400 square feet. It is presumed the Applicant was not aware of the bulk and area standards of the Zoning Code, and relied upon the Planning Commission's approval. If this is the case, by no fault of the Applicant, a substandard lot of record was created, with sanction by the City of Bixby.

The requirement that the duplex be constructed meeting the Zoning setbacks would be an unnecessary hardship, recognizing that the duplex could be constructed within parameters at or exceeding the current building footprint

square footage, albeit with an awkward and unconventional configuration; i.e. the duplex could be wider from east to west along Breckenridge and narrower from north to south along Parker.*

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

Recognizing that the City Council approved the subject property for RT zoning with the understanding that it would allow for a duplex, such as is hereby proposed, Staff would advise that that approval of the requested Variance would not cause substantial detriment to the public good or impair the purposes, spirit and intent of the Zoning Code or the Comprehensive Plan and further would be the minimum necessary to alleviate the unnecessary hardship.

To further support of a claim of no substantial detriment, Staff notes the following:

1. RT zoning allows for higher densities than the RD district.
2. Approval of the Variance and the authorization to construct a duplex fronting on E. Breckenridge, as proposed, would be more aesthetically pleasing than three (3) duplex units all facing Parker, and would provide a south 'bookend': together with its companion duplex immediately to the north, the proposed duplex would complete the mirror image of the duplexes facing Dawes and Parker on the north half of the block to the north.
3. The land area, at 10,820 square feet, exceeds the minimum land area required for a duplex, which is 8,400 square feet.
4. Although not specifically identified as a goal or objective of the Comprehensive Plan, infill development is generally embraced and encouraged in the central areas of Bixby and is widely accepted as sound planning policy.

* Currently applicable setbacks are: 15' front, 5' one side, 5' other side, 20' rear. Allowable building footprint area is 29' X 90' = 2,610 square feet. Proposed building footprint is 40' X 54' = 2,120 square feet.

5. *Approval of the Variance and the allowance to extend the depth of the duplex building from 29' to 40' would measurably increase the size of the livable floor area per unit, without necessitating an allowable but potentially awkward and aesthetically unpleasant east and west expansions to attempt to compensate. An expanded livable floor area per unit would likely increase the value of the structure and its attendant achievable rents, and thus could improve the area property values.*
6. *Strict application of the current Zoning setbacks would also fail to recognize the unique development history of the Midland Addition, which was originally built out at a time when zoning setbacks did not exist and lot owners were permitted to construct up to property lines. A sampling of existing structures in the immediate area would likely find that current Zoning setback standards are not met. The Zoning Code has provisions which allow for flexible front yard setbacks, for the sake of historic mode of structure placement (aesthetics), when existing structures encroach on front yard setbacks. The same principle should apply here.*

If the Board agrees with Staff that the above-set forth arguments are adequate for the justification of Variance in accordance with the test and standards provided in State Statutes and the Bixby Zoning Code, Staff recommends Approval, provided that the front and rear yard setbacks shall not be less than the approximately 15' front yard setback and 9' rear yard setback, as proposed by the original building permit application.

Darrell Mullins asked Erik Enyart if he had received a written response to his fax memo to City Attorney Phil Frazier regarding the appropriateness of re-hearing a denied application. Erik Enyart stated that the memo to the file included in the agenda packet was the documentation of a phone conversation with Mr. Frazier, in which Mr. Frazier described how the Board could allow for a reconsideration, but that he did not get a written response.

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

Applicant Ronnie Davis stated that he wants to build a duplex to be the mirror image of the other duplex on the other end of the block on facing Dawes. Mr. Davis added that he did not have enough room to build it, if it were turned straight with the other ones to face Parker. Mr. Davis said the building would be 53' wide and the lot was 66' wide, and that if oriented that way, the building would stick out into [Breckenridge]. Erik Enyart clarified that the lot was 64' wide along Parker.

Chair Jeff Wilson clarified with Erik Enyart that the statements in the Staff Report, that the building could be oriented to face Parker and be permitted and that the Zoning Code would also allow for a larger structure in terms of square feet, even by meeting the setback standards, were correct. Ronnie Davis said, if he could get the building on the lot and it would look right, he would have done that already.

Chair Jeff Wilson asked if anyone else wished to speak on the item. Tom Martin of 301 E. Breckenridge asked if the Board members had received a copy of his letter prior to the meeting and had read it. Mr. Martin read from his letter, copy of which was retained and attached to the Minutes of this meeting. Mr. Martin stated that the back yard would not be big enough for a playset, and that the duplex should be made smaller and be made to fit on the property [within Zoning setbacks]. Mr. Martin stated that the Applicant had not complied with the landscaping requirements of the Zoning Code on the other duplexes, and had, in fact, removed existing trees in order to build them.

Erik Enyart read from the Zoning Code and clarified that duplexes, as well as single family dwellings, were categorically exempt from the landscaping requirements of the Zoning Code.

Tom Martin stated that he had put nine (9) loads of gravel on his driveway in an attempt to divert flood waters from getting into his garage, and that only caused the waters to back around his driveway and come into the garage from another side. Mr. Martin stated that the alley separating the north and south halves of the block was a high point, which, together with the street, which was also higher, created a damming effect. Mr. Martin recommended the alley be cut at its intersection with Parker to allow water to continue to flow north along the west side of the street. Ronnie Davis agreed that the alley needed to be taken down. Erik Enyart agreed to coordinate with the City Engineer to get Mr. Davis to do the drainage work needed as per the City Engineer's recommendations.

Ronnie Davis noted that the City had put in new gravel on the alley a few years ago. Mr. Davis agreed to take the gravel down and replace with a swale if the City Engineer recommended it. Mr. Davis stated "it needs to be done."

The Board members discussed at length the footnote in the Staff Report, "Currently applicable setbacks are: 15' front, 5' one side, 5' other side, 20' rear. Allowable building footprint area is 29' X 90' = 2,610 square feet. Proposed building footprint is 40' X 54' = 2,120 square feet," and considered the fact that a larger structure could be constructed on the lot by right, and compared that fact to the Variance being requested.

Dave Hill asked Ronnie Davis if he would build the duplex anyway if the Variance was not approved, and Mr. Davis responded that he would, as he had too much money tied up into the project. Mr. Davis stated that the City Engineer had told him to drain the water to the streets, which drains to a catch basin at the intersection of Dawes and Parker to the north.

Chair Jeff Wilson clarified with Erik Enyart that it would be inappropriate for the Board to include remedial street drainage requirements in its Motion, but that it could preface its Motion on a statement that the Applicant has verbally agreed to address the situation to the City Engineer's satisfaction, which statement would be included in the record of the meeting.

Chair Jeff Wilson recognized the verbal pledge made by Applicant Ronnie Davis, and made a MOTION to APPROVE of BBOA-464, finding that the Variance met all Statutory and municipal ordinance conditions related to a Variance, as per the Staff Report by the City Planner and the testimony and statements made during the public hearing. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

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

NEW BUSINESS

Chair Jeff Wilson discussed with the Board the matter of a mandatory waiting period on re-applications for requests once denied. Darrell Mullins indicated disagreement with allowing applications to be refiled when the Board denied them once, and the finality of the Board’s decisions. Erik Enyart stated that there was a case in Creek County where the Applicant found it easier to simply reapply for applications that were denied than to have the Zoning Regulations enforced on his property, and so Creek County amended its Zoning Regulations to place mandatory waiting periods, six (6) months to one (1) year, unless the application was ‘substantially modified.’ The Board indicated agreement with this requirement.

Chair Jeff Wilson asked to entertain a Motion on the matter. Darrell Mullins made a MOTION to direct the City Planner to report to the City Council a recommendation to create a mandatory waiting period on applications when the same action was once denied. Jeff Wilson SECONDED the Motion. Roll was called:

ROLL CALL:

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

ADJOURNMENT

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

ROLL CALL:

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

Meeting adjourned at 9:07 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary