

**MINUTES
BIXBY BOARD OF ADJUSTMENT
BIXBY CITY HALL, COUNCIL CHAMBERS
7:00 PM, March 03, 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, and Dave Hill.
Members Absent: None.

MINUTES

1. Approval of Minutes for February 04, 2008

Murray King made a MOTION to APPROVE the Minutes of February 04, 2008. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

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

NEW BUSINESS:

2. **BBOA-471 – David Caffey.** Discussion and possible action to (1) approve a Variance from the Zoning Code to allow a garage accessory structure as a principal use prior to the construction and occupancy of the principal dwelling, and (2) to approve a Variance from the 750 square foot accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new 1,176 square foot garage accessory structure in the RS-1 Residential Single Family District.
Property Located: 11717 S. 87th E. Ave.; Lot 4, Block 11, *Southern Memorial Acres Extended*

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: – 11717 S. 87th E. Ave.;
– Lot 4, Block 11, Southern Memorial Acres Extended
LOT SIZE: 64,937 square feet; 1.5 acres, more or less
ZONING: RS-1 Residential Single Family District
REQUEST: (1) Variance from the Zoning Code to allow a garage accessory structure as a principal use prior to the construction and occupancy of the principal dwelling, and
(2) Variance from the 750 square foot accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new 1,176 square foot garage accessory structure in the RS-1 Residential Single Family District.

SURROUNDING ZONING AND LAND USE:

North: RE; Single-family residential in Southwood and Southwood Extended, Amended.

South: RS-1; Single-family residential in Southern Memorial Acres Extended.

East: RS-2; Single-family residential in Twin Creeks II.

West: RS-1; Single-family residential in Southern Memorial Acres Extended.

COMPREHENSIVE PLAN: Low Intensity + [Existing] Residential + Community Trail.

PREVIOUS/RELATED CASES: None found.

RELEVANT AREA CASE HISTORY:

BBOA-434 – Craig Bay – Request for Variance to be permitted to construct a 30' X 60' (1,800 square feet) 'shop' accessory building on Lot 5, Block 7, Southern Memorial Acres Extended, 11848 S. 84th E. Ave. – Denied 12/06/2004.

BACKGROUND INFORMATION:

ANALYSIS:

Property Conditions. The subject property is a narrow and deep 1.5-acre vacant lot with a minor tributary of Fry Creek located toward the rear/east end of the lot. Its average depth to width ratio, discounting the triangular area north and east of its widest width, is approximately (419' / 132.5' =) 3.16 : 1, which is much deeper than the 2:1 maximum depth to width ratio as per Subdivision Regulations Section 11-3-4.F.

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

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

Nature of Variance. The Applicant attempted to submit a building permit application on February 01, 2008, but was informed that the Zoning Code would prevent the construction of an accessory structure of this size, 1,176 square feet, and prior to the principal dwelling.

Variance to Allow Garage Accessory Structure as Principal Use. An accessory structure is defined as: "ACCESSORY USES OR STRUCTURES: A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure."

To be an accessory structure, it must be associated with a principal structure on the same lot. In Staff's estimation, the Zoning Code was written with the intent to disallow accessory structures prior to the construction and occupancy of principal uses for several reasons, the most important of which would be:

1. Accessory buildings, especially when large in size and/or owned and operated by persons living elsewhere from the premises, have the potential to be used for non-residential purposes (e.g. woodworking shop, automotive repair, metal fabrication, construction contracting storage, etc.), which may become an annoyance to the neighborhood.
2. Accessory buildings may be occupied as a dwelling, when the structures are customarily not built in accordance with building code requirements to allow for residential occupancy. Use as a substandard dwelling unit, in addition to being relatively unsafe, may become an annoyance to the neighborhood.

The principal problem presented with accessory buildings constructed prior to principal dwellings revolve around their use, or potential for misuse. If it can be demonstrated that the use of the accessory building would not be substantially detrimental to the neighborhood or public good, the principal problem would be rendered moot.

The Applicant has expressed interest in constructing the accessory building first, "to be used as a staging area and work shop in the construction of the primary residence. The accessory building will also allow storage of equipment for maintenance and up keep of the property while the primary residence is being built." The Applicant has expressed to Staff that, while it would be fitted with a bathroom, it would not be occupied as a dwelling.

Additionally, based on the submitted building plans, the structure's aesthetic qualities may weigh in favor of an argument that the Variance would not be substantially detrimental to the public good.

Variance to Exceed 750 Square Feet. On November 05, 2007, the Board of Adjustment approved BBOA-462 and BBOA-465, both concerning large accessory buildings in Bixby Ranch Estates, finding that the tests and standards for granting Variance were met in those applications and, more specifically, that the size of those lots, at approximately five (5) and nine (9) acres, respectively, were circumstances unique and different than that of more standard 'city lots' in the RE district, and that strict application of the 750 square foot maximum size restriction would cause an unnecessary hardship, as they would not be permitted adequately-sized accessory buildings. During the same meeting, the Board indicated agreement with Staff's recommendation to direct the matter be reported to the City Council for possible direction to proceed with an amendment to the Zoning Code to allow for larger accessory buildings on larger lots or in larger lot zoning districts. This reporting is pending along with other possible amendments to the Zoning Code.

The subject property contains 64,937 square feet (approximately 1.5 acres), which is 51,437 square feet larger than the 13,500 square foot minimum lot size standard in the RS-1 district. In addition, the next largest lots in Southern Memorial Acres and Southern Memorial Acres Extended, both within the same RS-1 district, appear to be two (2) lots each containing approximately 0.94 acres. Owing to its extreme depth and depth to width ratio, the subject property is exceptionally large and thus appears to have peculiar, extraordinary, and/or exceptional conditions or circumstances vis-à-vis surrounding residential lots in the same RS-1 district.

Using the same arguments for the justification of Variance, as found adequate in the cases of BBOA-462 and BBOA-465 for allowing larger accessory structures on larger lots, the subject property would appear to qualify for a somewhat larger accessory building.

Staff Recommendation for Variance to Allow Garage Accessory Structure as Principal Use. If the Board finds that the arguments presented above, 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 for this Variance, Staff would recommend Approval with certain Conditions of Approval, such as:

1. Variance approval shall expire and be automatically vacated upon certain conditions, such as the sooner of: Two (2) years from issuance of a building permit for the accessory structure, or completion of construction and issuance of a Certificate of Occupancy for the principal dwelling, at which point it will become a conforming accessory structure as to use.
2. Variance approval shall expire and be automatically vacated if the structure is maintained or used as a dwelling unit, permanently or temporarily, or maintained or used for non-residential purposes, other than as a temporary staging area used exclusively for and during the period of construction of the principal dwelling.
3. If either of the above conditions is violated, the City of Bixby, at the direction of the City Council, may require the vacation of use of the structure or its demolition, or other such remedies at law as deemed necessary and appropriate.

Staff Recommendation for Variance to Exceed 750 Square Feet. If the Board finds that the arguments presented above, based on the decisions in the cases of BBOA-462 and BBOA-465, or others as presented in the application or those 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 for this Variance, Staff would recommend Approval.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Cynthia Caffey, 11837 S. 84th E. Ave., described the proposed garage and stated that it would be built to hold supplies and tools while the house is being built. Ms. Caffey stated that the garage would be pretty, and not just a tin building. Ms. Caffey stated that she and her husband would begin constructing the house as soon as possible after the garage was built.

Murray King and Darrell Mullins questioned the distance from the garage to the creek and the floodplain. Mr. Mullins noted that he had a neighbor with a very similar situation with a creek in the rear yard. Erik Enyart referred the Board to the site plan on the 11" X 17" page attached to the back of the agenda packet for illustration of the proposed location of the structure on the lot, and noted that the structure would be out of the 100-Year Floodplain.

Lonnie Jeffries questioned how large the house would be, and Cynthia Caffey stated that it was planned to be a two (2) level house with 2,100 square feet, and a 'daylight' basement for up to 4,000 square feet combined.

Dave Hill asked if Ms. Caffey and her husband were aware of the recommendations that were in the Staff Report, and Ms. Caffey stated that she thought Mr. Caffey had them but that he was out of the country for two (2) weeks. Mr. Hill asked further, and Ms. Caffey stated that she believed he did have them as he had received it by email and had forwarded it to her to read. Erik Enyart confirmed that he had emailed a draft version of the Staff Report to Mr. Caffey over a week prior to the meeting. Ms. Caffey stated that she and her husband had no objection to the recommended requirements.

Darrell Mullins asked if the Board could impose a condition that the building look like the one depicted in the provided drawings, and Erik Enyart confirmed that the Board could do this.

Chair Jeff Wilson questioned the storage of equipment and if the applicants are doing their own contracting, and Ms. Caffey stated that they would do their own construction. Mr. Wilson asked the Board how this property or application is different from any other lots wanting to construct such a garage. Mr. Wilson expressed concern for setting a precedent and asked the Board and Erik Enyart what unnecessary hardship there may be and if the case met the other standards for granting Variance. Erik Enyart drew a comparison with BBOA-462 and BBOA-465 approved in November, 2007 in *Bixby Ranch Estates*, and discussed other arguments presented in the Staff Report. Mr. Enyart stated that BBOA-462 involved a large garage being constructed on that acreage lot prior to the construction of the house, and to allow for a staging area and the securing of materials for constructing that property's house, similar to the present application, and acknowledged that he did not catch at that time the Variance that would be necessary to allow for the accessory structure to be constructed as a principal use of the lot before the main dwelling was constructed.

Dave Hill clarified with Erik Enyart his statement that some community's zoning codes specifically prohibit accessory buildings from being constructed first, but that Bixby's code did not expressly prohibit it but did so only by interpretation.

The Board discussed and considered arguments regarding the tests and standards for granting Variance, such as the unique size and configuration of the lot, similarities with potentially precedent-setting cases BBOA-462 and BBOA-465, the potential hardship to the Applicant for the delay in construction of the house, due to the lack of a temporary Variance needed to construct the accessory dwelling first, when the same would not cause substantial detriment to the Comprehensive Plan and public good. The Board members expressed that they did not object to the Variance requested for these reasons.

Lonnie Jeffries questioned on how the stipulations would be enforced, and Erik Enyart answered that the recommended Conditions of Approval included an item allowing for the annulment of the Variance if certain conditions were met, as determined by the City Council.

Dave Hill asked if there was not another case in this subdivision which the Board had denied, and Erik Enyart confirmed this was the case and cited BBOA-434 – Craig Bay from 2004 as listed in the Staff Report. Cynthia Caffey noted that this case was on the property across from her present house, and in that case, the owner wanted to construct a huge metal building to be used for his business.

The Board expressed concern over setting precedent, and Erik Enyart noted that each case was different and had unique circumstances, and each was to be decided on the merits of that particular application and property.

Chair Jeff Wilson asked to entertain a Motion. Dave Hill made a MOTION to APPROVE BBOA-471 with the following Conditions of Approval:

1. Variance approval shall expire and be automatically vacated upon certain conditions, such as the sooner of: Two (2) years from issuance of a building permit for the accessory structure, or completion of construction and issuance of a Certificate of Occupancy for the principal dwelling, at which point it will become a conforming accessory structure as to use.
2. Variance approval shall expire and be automatically vacated if the structure is maintained or used as a dwelling unit, permanently or temporarily, or maintained or used for non-residential purposes, other than as a temporary staging area used exclusively for and during the period of construction of the principal dwelling.
3. If either of the above conditions is violated, the City of Bixby, at the direction of the City Council, may require the vacation of use of the structure or its demolition, or other such remedies at law as deemed necessary and appropriate.
4. The approved building shall be constructed to appear in accordance with the provided construction drawings.

Darrell Mullins 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: None.

ADJOURNMENT:

There being no further business to discuss, Lonnie Jeffries made a MOTION to ADJOURN. 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

Meeting adjourned at 7:31 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary