

**MINUTES
BIXBY BOARD OF ADJUSTMENT
BIXBY CITY HALL, COUNCIL CHAMBERS
7 PM, AUGUST 5, 2002**

MEMBERS PRESENT	STAFF PRESENT	MEMBERS ABSENT
JEFF WILSON	JIM COFFEY	NONE
CARL CARNAHAN		
DAVE HILL		
LONNIE JEFFRIES		
DARRELL MULLINS		

1. CALL TO ORDER 7:00 PM

Chairman Wilson moved approval of the minutes to the end of the agenda.

- 4. BBOA387 Public Hearing, Discussion and Possible Action to approve a Variance from Chapter 2 Section 240.2(e) to allow the construction of a detached garage greater than 750 square feet, Joe A Ray, applicant.**

STAFF REPORT:

The staff has received phone calls in favor and opposed to this application. One caller was concerned the applicant was planning to operate a business out of the garage. The property is not zoned for a business or commercial activity. The staff has no opposition to the detached garage, as long as it fits within the décor of the subdivision, and adheres to all of the building ordinances. Although we do not enforce subdivision covenants they may be applicable. There are other detached garages in the area.

Joe A Ray, 8249 E 118th Street, Had a business for four years and had to close it and get a job. I cannot sell the equipment in today's economy for what it is worth so I have decided to build a storage shed and keep the equipment until the economy improves. The storage shed is not to run a business it is for my own personal benefit. The size of the building is not set in stone but would like enough room to store equipment, motorcycles, and cars.

Commissioner Hill asked the applicant if he had any intentions of operating a business in his garage. Ray said he did not.

Commissioner Mullins asked about the covenants in the subdivision. Applicant was not sure what the covenants said.

Commissioner Mullins asked about the size of the building and the kind of material to be used in construction. Applicant said he was flexible as to the size and the material.

Commissioner Jeffries asked how big is the lot. Applicant replied 100 by 150 feet with the house on the front part of the lot.

Commissioner Hill said his concern is, don't run a business.

Commissioner Mullins concern is the size of the building. It is as large as a house. The value of houses in the neighborhood. Applicant was willing to limit the size of the building

Commissioner Hill asked the applicant for the size of building he wanted the Board of Adjustments to consider. Applicant replied a 30 by 40 building.

Mike Arthur, 8233 E 118th Street, we have drainage problem in our area and the construction of a building that size would be like two houses on a lot and create more water problems. I have a storage building of 700 square feet and I have no opposition to a building of that size being constructed. Property values are going up and we should safeguard the covenants. A large building as commercial aspects and finds it hard to believe that someone needs a building as large as their house. I believe it would detract from the property value.

Jerry Guinn, 11819 S 83rd East Ave., concern is that a building of that size smacks of commercialism. We had another case were a person came to the neighborhood, befriended the people, got a lot of us to sign a petition for him to build a big garage, to store items while he built a house. All he ever used the building for was a commercial storage building. He had a construction business and he used the building for storage. A large building smacks of commercialism and if the applicant

sold the property what would the buyer's do? There are a lot of old people in the area and we want it to remain residential.

Commissioner Hill asked the applicant to come back up for another question. Down the street there are two out buildings on a lot and one is a good size. Where you there when they were built? Applicant replied yes. Around the corner the other direction is a big building in the back yard, what is it. Applicant replied he did not know but thought the property owner raced sprint cars. He also has a heating and air business.

Commissioner Hill asked for the size the applicant would consider. The applicant replied a 30 x 40, 1200 square feet. The applicant asked if this is denied can he still build the 750 square foot building. He was told he could.

Commissioner Hill moved and Commissioner Jeffries seconded a motion for approval with a limitation of 1200 square feet building.

VOTING FOR: Hill, Jeffries, and Wilson

VOTING AGAINST: Mullins, Carnahan

ABSTAINING: None

MOTION PASSED: 3-2-0

5. BBOA 388 Public Hearing, Discussion and Possible Action to approve a Special Exception to all a Mining Operation in an Agriculture Zone (Chapter 3, Section 310, Table 1, i.e. Sand Plant), R C Volentine and Anchor Stone Company Applicants.

John Moody, attorney for the applicant, receive a call late in the day from Tom Wendrick, concerning the application and wanted to have a continuance so his interest and the interest of other property owners could be considered. We agreed for a continuance and would like to request the item be continued to the next meeting so we can meet with property owners concerning the application.

City Planner asked that any motion for continuance state a date specific for the hearing of the application.

Commissioner Carnahan stated that it looks like the cart is before the horse in this matter. From my packet I see the applicant has not secured an application from the Department of Mines, a 404 permit from the Corps of

Engineers, nor an environmental study from Fish and Wildlife. I think these items should be addressed before the item comes to this board.

John Moody replied that the zoning must be in place for application can be made. Sand Operations do not need a 404 permit from the Corps of Engineers. We will check with fish and wildlife, and supply a copy of a letter from the Corps of Engineers. The engineer on the project stated that the zoning must be in place before an application can be made to the department of mines.

The planner stated that if the item is continued he will contact the department of mines and get a clarification on which comes first the Special Exception or the application.

Commissioner Carnahan moved and Commissioner Hill seconded to continue the application until Tuesday, September 3, 2002

VOTING FOR: Jeffries, Hill, Mullins, Carnahan, and Wilson

VOTING AGAINST: None

ABSTAINING: None

MOTION PASSED: 5-0-0

6. BBOA 389 Public Hearing, Discussion and Possible Action to approve a Variance form Chapter 10 Section 1021.3a set back of business sign from highway right of way, Mark Marker, applicant

STAFF REPORT

The applicant has applied to set back the sign just outside the road right-of-way, instead of the ordinance requirement of a 10-foot set back from the right of way.

The applicant has partially constructed the sign without a permit and was stopped for completing the sign that is presently in the road right of way. The staff contacted the Oklahoma Department of Transportation who will not allow a new sign of this type to be erected in their right of way.

The sign was discussed after the permit was filled with the Architectural Committee who where pleased with the concept of the sign and its design but opposed the placement in the road right of way. The Committee has asked that I state of record that they are opposed to the variance to allow a

sign closer than 10 foot inside the road right-of way. The feeling of the committee is that once the set back is compromised it will open the door to others who would like the same variance.

There are other non-conforming signs along Memorial that are a result of highway widening. As the sign are replaced the staff is requiring the signs be moved to the proper set back. This has resulted in one sign not being erected to date and another being moved.

Commissioner Hill asked if we accept this sign do we then have to accept other signs?

The Planner said each case is decided separate on its own merit.

Commissioner Carnahan asked about other signs in the right of way.

The Planner stated there are non-conforming signs. Some were caused by the right of way acquisition to widen the highway. If a sign is taken down or repaired or becomes a nuisance such as limiting line of sight, then it will have to conform to the ordinance.

Mike Marker, 6521 E 151st Street, applicant The placement of the sign is along a right of way that is very extensive, being about 45 foot from the curb. There are trees on front of the property on right of way we would like to keep. It is set back another 10 feet it could not be seen. That would make it 55 foot from the curb. The Comprehensive Plan shows this area to ultimately be commercial. This will come up again in the future because every business will have to set there sign over 45 foot from the curb. This would make it difficult for business to take advantage of the exposure on property for which we are paying a high price. I don't see the logic on a ten foot set back. I can park to SUV's between the curb and the sign so I don't see a safety issue. As to the mowing issue, we mow the road right of way in front of our property. The state has never maintained the property. If the state wanted to widen 151st Street we would certainly move the sign.

The Planner indicated that the road right of way is 80 foot from the centerline of the street.

Commissioner Hill stated that he had looked at the sign from Sheridan onto 151 Street, all the trees set further out in the right of way than his sign.

The planner said the right of way line needs to be established by a survey. The preliminary information I have indicates the sign is presently in the right of way.

Chairman Wilson wanted to establish how many feet outside the right of way the applicant would like to place the sign. The Board of Adjustment can give a variance on the property outside the right of way but cannot give a variance for property in the right of way.

Mike Marker said the architect of the property had done a survey and the sign is within the right of way. We contacted the state of Oklahoma and they said they had no problem with the sign. The state does not have the resource to police sign placement so they leave it up to the city. Allow this variance so we do not have to move it back another ten foot.

Commissioner Hill asked why the code says 10 foot. The planner was not sure why the code is 10 foot but stated it is common to other codes and ordinances. Commissioner Hill asked if we adopted the 10-foot or did the state. The planner responded it is our ordinance not the state.

Commissioner Hill stated he saw nothing wrong with the sign. Its placement does not limit lines of sight. It is behind poles, behind trees, behind other visual obstructions. The planner responded that he had contacted ODOT and was told by the director that only directional and information signs are allowed in the right of way and that business signs do not fall in this category. The staff will not approve a building permit for a sign in the right of way.

Commissioner Hill added that the board does not have the authority to approve a sign in the road right of way.

Commissioner Carnahan stated that if the sign is left in the right of way and ODOT comes along and says move the sign want Mr. Marker have to move his sign. The planner reminded the board that the issue before the board was a variance to the 10-foot outside the right of way placement of the sign. It is not whether the sign is in the road right of way. You can allow it to set closer to the right of way than 10 foot. If the sign is within the right of way then the sign will have to be moved. The enforcement of this item is by the city.

Marker said he would address the right of way question with the state. If the state tells him to move the sign he will move the sign, but I do not want to move the sign an additional 10-foot. Moving the sign hurts me and any other business that wants to place a sign of 151st Street. I have a wide area lot for people to see my sign but smaller lots for other businesses would be limited. If you have to set the sign back 55 foot, then what is the point?

Commissioner Hill said he had a problem of approving something in the right of way, which ODOT does not allow.

Marker replied he is asking the board to rule how he can set the sign in the 10-foot corridor. The Planner added that the issue is beyond the road right of way but closer than 10 foot.

Marker said if the ODOT requires him to move the sign he will move the sign. The Planner stated that the Sign Permit will require the sign be placed outside the right of way. The present sign is within the road right of way.

Commissioner Mullins asked are we talking about what the sign is or what the sign will be.

Marker said if I can convince the city to allow the sign to stay where it is then the board is approving that the sign not be move 10-foot outside the right of way. If I cannot convince the city or the state to allow my sign to stay where it is then I'm asking you for a variance to the 10-foot set back.

Commissioner Mullins stated that what you're asking is, wherever the road right of way is, you be allowed to place your sign just outside. Marker responded yes.

Michael Burns, I live at White Hawk and drive by the business every day, and although I do not speak for the Chamber, but from a business standpoint we are trying to attract business to the 151st Street Corridor, and with the bad publicity the city often gets, are we going to discourage other business from locating along 151st Street. Being of business mind through the Chamber please consider that we want to do all we can to attract businesses to this area for the growth of our community.

Chairman Wilson asked Marker to pointed out on the drawing where the sign is located. He pointed out the location. Wilson stated it appears that the sign will be adjacent to parking areas. If the variance is not granted then where will the sign be placed? Marker point out the issue of the right of way would apply all along the frontage of the property. Wilson asked if the variance is not granted will you be able to put up a sign? Marker responded he would put it somewhere but it would be a hardship.

Commissioner Mullins moved and Commissioner Hill seconded approval of the variance from the 10-foot set back from the right of way.

VOTING FOR: Carnahan, Jeffries, Hill, Mullins, and Wilson

VOTING AGAINST: None

ABSTAINING: None

MOTION PASSED: 5-0-0

2. CONSIDERATION OF MINUTES OF APRIL 1, 2002.

Commissioner Jeffries moved and Commissioner Mullins seconded for approval.

VOTING FOR: Carnahan, Jeffries, Hill, Mullins, and Wilson

VOTING AGAINST: None

ABSTAINING: None

MOTION PASSED: 5-0-0

3. CONSIDERTAION OF MINUTES OF JULY 1, 2002.

Commissioner Carnahan moved and Commissioner Hill second for approval.

VOTING FOR: Carnahan, Hill, Mullins, and Wilson

VOTING AGAINST: None

ABSTAINING: Jeffries

MOTION PASSED: 4-1-0

7. OLD BUSINESS: The planner passed out the city council agenda staff report indicating that Hollis Martin case had been decided in court and bids would be taken for demolition of detached building. Discussion ensued.

8. NEW BUSINESS: None

9. ADJOURMENT

Approved

Date

