

**MINUTES  
BIXBY BOARD OF ADJUSTMENT  
BIXBY CITY HALL, COUNCIL CHAMBERS  
7 PM, September 2, 2003**

<b>MEMBERS PRESENT</b>	<b>STAFF PRESENT</b>	<b>MEMBERS ABSENT</b>
<b>CARL CARNAHAN</b>	<b>JIM COFFEY</b>	<b>DARRELL MULLINS</b>
<b>DAVE HILL</b>		<b>LONNIE JEFFRIES</b>
<b>JEFF WILSON</b>		

- 1. CALL TO ORDER**
- 2. APPROVE MINUTES FOR August 4, 2003**

Carl Carnahan moved and Dave Hill seconded for approval as amended.

**VOTING FOR:** Carl Carnahan, Dave Hill, and Jeff Wilson

**VOTING AGAINST:** None

**ABSTAINING:** None

**MOTION PASSED: 3-0-0**

- 3. BBOA 408 Discussion and Possible Action to approve a variance to Chapter 10, Section 1021.3a set back of business sign from highway right of way, Abbas Momeni, applicant**

Staff Report: Abbas Momeni, Car Factory, comes asking the board to allow him to place his sign closer than ten foot from the road right-of-way. A sign permits has been approved by the staff and the architectural committee to place the sign. However, the placement of ten foot outside the right of way would place the sign on the front parking display area. The sign can be constructed that will not encroach on the right of way if a variance to the 10 foot set back is granted. (Chapter 10, Section 1021.3). The Board can grant the variance, however, no part of the sign can encroach of the ODOT right of way. Staff recommends approval.

Representative for the sign Company, Muse Casery, 1801 N Villa, Broken Arrow, Ok described their need for the variance.

**Dave Hill moved and Carl Carnahan seconded that the variance be approved.**

**VOTING FOR:** Carl Carnahan, Dave Hill, and Jeff Wilson

**VOTING AGAINST:** None

**ABSTAINING:** None

**MOTION PASSED: 3-0-0**

**BBOA 409 (a) Discussion and Possible Action to approve a Special Exception, Section 1002.3(a) open air activities except for construction facilities for sale of Christmas Trees, wreaths, bows and other seasonal goods from November 25, 2003 through December 24, 2003, and (b) A Variance to “Chapter 11, Section 1140 (d) unenclosed off-street parking areas shall be surfaced with an all-weather material,” to allow parking on gravel and grass, William Manley, Applicant.**

Staff Report: William Manley comes asking for a Special Exception for the sale of Christmas trees and related items on the corner of 101st and Memorial. He is also asking for a variance from the requirement for all weather parking surface. The request is for a thirty day special exception as outlined in Chapter 10, Section 1002.3 which reads, “Temporary open air activities, except construction facilities, may continue for a period not to exceed thirty (30) days per each application for special exception by the Board of Adjustment.”

Please notice that there are two requests for BBOA 409. One for a Special Exception and one for a Variance to Parking Surfaces. The items should be considered separately.

Part a Special Exception

In City Attorney’s Opinion the Oklahoma Statutes Title 11§ 44 101 – 104, Power granted to the Board of Adjustment, the statute does not include consideration of variance of those ordinances, which are not a part of the zoning code. To consider or approve the applicants request for itinerant vendor uses is in direct conflict with Ordinance 837 to Chapter 13, Licenses, a non-zoning code that is not within the power of the Board of Adjustment to consider under the State Statute.

Attached is Ordinance 837 adopted by the City Council on September 9, 2001. Ordinance 837 limits a temporary or itinerant vendor use to seven days every 180 days. The Ordinance identifies the location for itinerant vendor sales as site other than a permanent site. Section 13-187 reads; “Itinerant vendors, or transient vendors, who use and/or utilize for their business site such structure other than of a permanent nature, such business site including and utilizing, but not limited to tents, mobile homes, portable dwellings or business trailers, or any such office or enclosure of a portable, mobile, or other than of permanent

fixture, shall be limited to conduct business on such site for not more than seven days.

We have some permanent sites where these items are sold and on which business is conducted from a permanent structure throughout the year. The fact that they are permanent business sites is a key factor.

Ordinance 837 has the following definitions: 1. Temporary means and shall be construed to mean any such business transacted or conducted in the city for which definite arrangements have not been made for the hire, rental, or lease of premises for a least 180 days in or upon which such business is to be operated or conducted. 2. Transient means any such business or any such itinerant vendor as may be operated or conducted by any persons, firms or corporations, or by their agents or employees who reside away from the City of who have fixed places of business in places other than the City, or who move stocks of goods or merchandise or samples thereof into the City with the purpose or intention of removing them, or the unsold portion thereof, away from the City before the expiration of 180 days.

A copy of the Ordinance was supplied to the applicant's representative. A meeting was held. The staff, Mr. Manley, and Ted Sack attended the meeting. Both Zoning and Board of Adjustment actions were discussed.

It seems clear that the City Council's full intent was to limit itinerant vendors as described above. I was present when the Council adopted Ordinance 837 and it seemed their full intent was not to allow itinerant sales. The City Council premise seemed to be it was not fair to regular businesses to compete with itinerates who do not have the cost of permanent buildings and do not have a permanent employee base. Permanent Merchants support the Community year-round. In addition I took the question of the Snow Cone businesses before the City Council this year and ask if they would consider modification of the Ordinance 837, their instruction was to enforce the present ordinance. **The staff recommends the Board of Adjustment decline consideration of the Special Exception on the basis that the Board of Adjustment does not have the power to consider a variance from a non-zoning item, and that such consideration or decision would be directly contrary to State Statute and the City Code with respect to itinerant vendors.**

Part b Variance

**In the past few years a lot of work has gone into insisting that new construction have black top or concrete parking and drives. Not only does the ordinance require an all weather surface, all new construction in past recent years have been required to surface their parking lots and drive ways with black top or concrete. It is not fair to our business community to allow a part time business, itinerate vendor, or others to park on gravel, grass, or surfaces other than black top or concrete. The staff recommends denial.**

**Ted Sack 111 S Elgin, Sack and Associates, Representing the property owner.** We meet with the staff as Mr. Coffey explained and we are aware of the ordinance. We discussed ways to handle this. Mr. Manley is the owner of the property and he is not leasing or renting the property, so we feel it is different than the ordinance states. He owns the property, he operates a business, and this is one of the businesses he operates. It is temporary businesses that he desires to use the property for. He has an extremely large investment in this property. We feel we need the Board of Adjustment approval for this special exception. We have talked about doing a PUD so the zoning would allow part time open-air sales. He has operated the property for a long period of time with seasonal sales. We did not have time to do the PUD for sales this year so that is why we come asking for a Special Exception. After reading Mr. Coffey's Staff Recommendation I spoke with Mr. Manley's attorney and we would like to request a week extension so we could go to the City Council and request that they waive this ordinance, and then bring it back to the Board of Adjustment.

A long discussion ensued as to whether the board should here the items and the merit of hearing or not hearing the items.

Carl Carnahan moved that the Board continue the item for one week, if there is reason to reconsider this on the merit of the City Council and the City Attorney that the board should legally and logically consider the item we can hear these items and not hear something the city attorney says we should not be hearing. Dave Hill seconded the motion.

**VOTING FOR:** Carl Carnahan, Dave Hill, and Jeff Wilson

**VOTING AGAINST:** None

**ABSTAINING:** None

**MOTION PASSED: 3-0-0**

The City Planner asked that a motion to continue be made for each item in BBOA 409.

Carl Carnahan moved and Dave Hill seconded to also continue 409b for one week.

**VOTING FOR:** Carl Carnahan, Dave Hill, and Jeff Wilson

**VOTING AGAINST:** None

**ABSTAINING:** None

**MOTION PASSED: 3-0-0**

- 4. BBOA 410 (a) Discussion and Possible Action to approve a Special Exception, Section 1002.3(a) open air activities except for construction facilities for sale of Halloween related items such as pumpkins, gourds, hay and other seasonal goods and related activities such as pony rides and miniature train rides from September 26, 2003 through October 31, 2003, and (b) A Variance to “Chapter 11, Section 1140 (d) unenclosed off-street parking areas shall be surfaced with an all-weather material,” to allow parking on gravel and grass, William Manley, Applicant.**

Carl Carnahan moved and Dave Hill seconded to also continue 410a for one week.

**VOTING FOR:** Carl Carnahan, Dave Hill, and Jeff Wilson

**VOTING AGAINST:** None

**ABSTAINING:** None

**MOTION PASSED: 3-0-0**

Carl Carnahan moved and Dave Hill seconded to also continue 410b for one week.

**VOTING FOR:** Carl Carnahan, Dave Hill, and Jeff Wilson

**VOTING AGAINST:** None

**ABSTAINING:** None

**MOTION PASSED: 3-0-0**

**5. Old Business: None**

**6. New Business: None**

**7. Adjournment**

**Approved** \_\_\_\_\_ **Date** \_\_\_\_\_