

**UNOFFICIAL MINUTES UNTIL APPROVED**

**MINUTES  
BIXBY BOARD OF ADJUSTMENT  
BIXBY CITY HALL, COUNCIL CHAMBERS  
7 PM, OCTOBER 1, 2007**

**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 7:01 PM.

**ROLL CALL**

Members Present: Jeff Wilson, Dave Hill, Murray King, Lonnie Jeffries, Darrell Mullins  
Members Absent: None

Approval of Minutes for August 6, 2007

A MOTION to APPROVE the Minutes of the August 6, 2007 was made by Dave Hill and SECONDED by Murry King. Mullins and Jeffries stated they would abstain for not having been present at that meeting. Roll was called:

ROLL CALL:

AYE: King, Hill, & Wilson  
NAY: None.  
ABSTAIN: Mullins, Jefferies  
MOTION CARRIED: 3:0:2

Chair Jeff Wilson announced that, in the interest of time and those present, the agenda would be taken in a different order

2. BBOA-457 – Jim Ferris for BTO Properties, LLC. Discussion and possible action to approve a Variance from the Zoning Code to allow a second business/advertising sign in the CG General Commercial District.  
Property Located: 13406 S. Memorial Dr.

Jim Ferris stated he represented the interests of the previous owner and the YMCA. Mr. Ferris stated that the property ownership has changed since the application was filed, and he needed to contact the new owners as they may or may not choose to prosecute the application. Mr. Ferris requested a continuance of the case to the next meeting.

A MOTION to Continue the BBOA-457 to the November 05, 2007 regular meeting was made by Dave Hill and SECONDED by Lonnie Jeffries. Roll was called:

ROLL CALL:

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

1. BBOA-456 – Carl & Betty Davis. Discussion and possible action to approve a 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.  
Property Located: 221 and 223 E. Breckenridge Ave.

Chair Jeff Wilson introduced the item and called on Erik Enyart for the staff report and recommendation. Enyart summarized the staff report on page 5 of the agenda packet:

Applicant: Carl & Betty Davis  
Location: 221 and 223 E. Breckenridge Ave.  
Land Area: 100' X 64' = 6,400 square feet (approximately 0.15 acres)  
Existing Zoning: RT Residential Townhouse District  
Request: 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.

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.

Previous / Related Cases: (Not an exhaustive list)

BZ-318 – Betty Davis: Subject property approved for rezoning from RS-3 to RT in October/November, 2006.  
BL-341 – Betty Davis: Subject property created by Lot-Split approved October 16, 2006.

Background Information:

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.

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 May, 2004 per BZ-302 – Betty Davis.

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 Regulations 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
- Apply for a Variance to reduce the setbacks.

The Applicant chose the second method.

Analysis:

Oklahoma State Statutes Title 11 Section 44.107 provides the following test and standard for the granting of Variance:

“A variance from the terms, standards and criteria that pertain to an allowed use category within a zoning district as authorized by the zoning ordinance may be granted, in whole, in part, or upon reasonable conditions as provided in this article, only upon a finding by the board of adjustment that:

1. The application of the ordinance to the particular piece of property would create an unnecessary hardship;
2. Such conditions are peculiar to the particular piece of property involved;
3. Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the ordinance or the comprehensive plan; and
4. The variance, if granted, would be the minimum necessary to alleviate the unnecessary hardship.” (emphasis added)

Similarly, the Bixby Zoning Code Section 11-4-8.A and .C provides the following test and standard for the granting of Variance:

“A. General: The board of adjustment, upon application and after notice (when notice is required) and public hearing, and subject to the procedural and substantive standards hereinafter set forth, may grant such variance from the terms of this title as will not cause substantial detriment to the public good or impair the spirit, purposes and intent of this title, or the comprehensive plan, where by reason of exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation, condition or circumstance peculiar to a particular property, the literal enforcement of this title will result in unnecessary hardship. The board shall not vary any jurisdictional requirement, such as notice. The board shall not permit by variance a principal use not otherwise permitted in the applicable district, it being the expressed spirit and intent of this title that a change of the permitted principal uses shall be made by ordinance amendment of the zoning code or official zoning map. (Ord. 288, 2-4-1975)” (emphasis added)

And:

“C. Action Of Board: The board shall hold the hearing and, upon the concurring vote of three (3) members, may grant a variance after finding that:

1. By reason of extraordinary or exceptional conditions or circumstances which are peculiar to the land, structure or building involved, the literal enforcement of the terms of this title would result in unnecessary hardship.
2. Such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same district.
3. The variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit and intent of this title or the comprehensive plan.

Provided, that the board, in granting a variance, shall prescribe appropriate conditions and safeguards, and may require such evidence and guarantee or bond as it may deem necessary to enforce compliance with the conditions attached.” (emphasis added)

The subject property has extraordinary or exceptional conditions or circumstances which are peculiar to the subject property by virtue of the zoning and subdivision actions conferred upon it by BZ-318 and BL-341, both approved in 2006.

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 Commissions 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.

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.

Strict application of the bulk and area standards to the subject property would cause an unnecessary hardship, by disallowing the use of the property for a duplex, which was the intent of the Applicant when requesting and being granted RT zoning in 2006.

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.

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 proposed by the original building permit application.

Applicant Betty Davis of 4112 E. 191<sup>st</sup> St. S. summarized the location and the layout of the duplexes on Dawes and Parker that have already been built. Ms. Davis stated that the new duplex will be facing Breckenridge and give it the same layout look as the other duplex on the end of the street. Ms. Davis discussed the orientation of the four (4) lots, which resulted from the Lot-Split, in relation to the streets.

Mullins questioned if the duplex could be rotated at 90° to fit on the lots.

Enyart responded that the property in question, at the time it was rezoned RT in 2006, was approximately 100' from east to west along Breckenridge, and 130' from north to south along Parker. The lot was approved to be split with one of the lots facing Parker and the corner lot facing both Parker and Breckenridge. The Zoning and Lot-Split were

approved by the City Council and the Planning Commission to allow for the duplex development.

Mullins questioned the lot split purposes was to fit all the duplexes on one lot.

Davis answered that they had to have the lot split in order to get the layout of the duplexes to fit the lots. Betty stated the intent was to build the last duplex on the corner lot the opposite layout as the first corner lot [at the southwest corner of Dawes and Parker].

Mullins questioned the setbacks that the duplex would not have a back yard if the duplex is turned toward the other street.

Enyart stated that it was his intent in his recommendation that the setbacks be not less than what was originally proposed by the building permit application, which was 15' front setback and 9' rear yard setback.

Tom Martin of 301 E. Breckenridge, Bixby, stated he lives straight East of the property and has a problem with the drainage from the other duplexes. Mr. Martin is concerned that the other duplex will only add more water drainage to his problem which already has put 6 inches of flood water in his garage three times. Mr. Martin had talked the City Council about the issue and the City Council had viewed the problem was caused by the water drainage coming off of the duplexes roofs. The City Council had built drainage on his side of the property without his consent that was supposed to drain to the South. Mr. Martin states the height of the street and all the driveways is allowing all the water drainage to go in his garage and not in the drainage that was built for the problem. Mr. Martin would like to see gutters put on the duplexes to stop the drainage problem if passed. Mr. Martin stated that he would approve the project, as it looks good, and would improve the area and neighborhood, but for the drainage issues.

Enyart stated that it sounds like there are drainage problems in the area but it is much bigger than this property. Erik pointed out what is being asked is not about the approval to building the duplex but to face it off Breckenridge rather than Parker which is permitted by present zoning regulations. Erik suggested to Tom Martin he petition the Council on looking into correcting the drainage problems in the area.

Mike Daniels of 220 E. Breckenridge, Bixby, stated he has owned the house for 50 years and is located directly across the street from the property. Mr. Daniels stated he has water under his home from the other duplexes and has a problem with the drainage. Mr. Daniels stated that he did not want the duplex until the City fixes the drainage problems.

Mullins asked, if the owners had permission to build, and only the orientation of the duplex was in question, how would the orientation affect the water drainage?

Tom Martin stated that he would approve this subject to it draining to the north, and he couldn't care which direction the duplex faced as long as they take care of the drainage.

Wilson asked if the board does not approve a Variance can the house be facing Parker?

Enyart explained that it could be done.

Wilson clarified with Enyart that the primary reason for the Variance was for aesthetics.

Mike Daniels expressed objection to facing the duplex on Breckenridge due to it having no back yard.

Hill stated that he would not be able to vote to approve something that puts additional water on a neighbor.

A MOTION to Deny BBOA-456 was made by Dave Hill and SECONDED by Lonnie Jeffries. Roll was called:

ROLL CALL:

AYE: Wilson, Hill, King, Jeffries, Mullins

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 5:0:0

Chair Jeff Wilson announced that items 3 and 4 would be considered simultaneously as they pertain to the same property.

3. BBOA-458 – Tanner Consulting, LLC for David Younce. Discussion and possible action to approve a Special Exception per Zoning Code Section 11-7D-2 to allow Use Unit 8 Multifamily Residential in the CG General Commercial District.

Property Located: 8260 and/or 8200-block of E. 146<sup>th</sup> St. S.

4. BBOA-459 – Tanner Consulting, LLC for David Younce. Discussion and possible action to approve a Variance from the Zoning Code to reduce required setbacks in the CG General Commercial District.

Property Located: 8260 and/or 8200-block of E. 146<sup>th</sup> St. S.

Chair Jeff Wilson introduced the item and called on Erik Enyart for the staff report and recommendation. Enyart stated that the Applicant was anticipated to withdraw the Variance request. Mr. Enyart summarized the staff report on page 20 of the agenda packet:

Applicant: *Tanner Consulting for David Younce*  
Location: *8260 and/or 8200-block of E. 146<sup>th</sup> St. S.*  
Land Area: *7.81 acres, more or less*  
Existing Zoning: *CG General Commercial District*  
Request: *(A) Special Exception per Zoning Code Section 11-7D-2 to allow Use Unit 8 Multifamily Residential in the CG General Commercial District*

(B) Variance from the Zoning Code to reduce required setbacks in the CG General Commercial District

Surrounding Zoning and Land Use:

North: CG, RM-1, & PUD 56; Pending “South Village” mixed use commercial and multifamily development north of 146<sup>th</sup> St. S.

South: CG; Ryder Brick and mini storage.

East: RM-1, RS-2, & PUD 5; Pecan Valley Addition and vacant land.

West: CG & CS; Ryder Brick, Tire Barn, and the River Run shopping center.

Previous / Related Cases:

BBOA-458 – Special Exception Analysis:

The submitted information does not detail the scope of the development or proposed development standards, such as would be afforded by a PUD. Development standards would adequately demonstrate to the City and the Public at large the proposed density, type and character of multifamily proposed (number of stories, range of sizes of units, condominium or market rate rental, etc.), amenities, landscaping and buffering appropriate for the type of development vis-à-vis surrounding developed properties and anticipated development (e.g. “South Village”).

Some of the above cited details have been discussed briefly during staff meetings with the professional planning firm and architect, but such discussions are not represented fully in the submitted materials, nor are they available in a format (i.e. Development Standards) which could be used to attach conditions to the approval.

The subject property is located almost entirely within the Corridor Appearance District, which is 600’ in width on both sides of this particular section of S. Memorial Drive (Zoning Code Section 11-7G-2).

The Bixby Comprehensive Plan (page 12, third paragraph), the Appearance Corridor District Guidelines (Section 1.D), and the prevailing trend in Bixby favoring development by PUD to ‘straight’ zoning, all serve to support the requirement of a PUD for major developments in this area, including this proposed major development.

Staff is supportive of the Special Exception, in terms of land use, finding it conducive to the Comprehensive Plan, the Special Exception provisions of the Zoning Code and the CG district, and finding it consistent with surrounding zoning and development patterns. However, Staff recommends the Board require a PUD and so allow the Planning Commission and City Council to review and consider a more complete and detailed proposal, including most importantly the specific Development Standards.

Staff Recommends Approval subject to a PUD.

BBOA-459 – Variance Analysis:

Oklahoma State Statutes Title 11 Section 44.107 provides the following test and standard for the granting of Variance:

“A variance from the terms, standards and criteria that pertain to an allowed use category within a zoning district as authorized by the zoning ordinance may be granted, in whole, in part, or upon reasonable conditions as provided in this article, only upon a finding by the board of adjustment that:

1. The application of the ordinance to the particular piece of property would create an unnecessary hardship;
2. Such conditions are peculiar to the particular piece of property involved;
3. Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the ordinance or the comprehensive plan; and

4. The variance, if granted, would be the minimum necessary to alleviate the unnecessary hardship.” (emphasis added)

Similarly, the Bixby Zoning Code Section 11-4-8.A and .C provides the following test and standard for the granting of Variance:

“A. General: The board of adjustment, upon application and after notice (when notice is required) and public hearing, and subject to the procedural and substantive standards hereinafter set forth, may grant such variance from the terms of this title as will not cause substantial detriment to the public good or impair the spirit, purposes and intent of this title, or the comprehensive plan, where by reason of exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation, condition or circumstance peculiar to a particular property, the literal enforcement of this title will result in unnecessary hardship. The board shall not vary any jurisdictional requirement, such as notice. The board shall not permit by variance a principal use not otherwise permitted in the applicable district, it being the expressed spirit and intent of this title that a change of the permitted principal uses shall be made by ordinance amendment of the zoning code or official zoning map. (Ord. 288, 2-4-1975)” (emphasis added)

And:

“C. Action Of Board: The board shall hold the hearing and, upon the concurring vote of three (3) members, may grant a variance after finding that:

1. By reason of extraordinary or exceptional conditions or circumstances which are peculiar to the land, structure or building involved, the literal enforcement of the terms of this title would result in unnecessary hardship.

2. Such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same district.

3. The variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit and intent of this title or the comprehensive plan.

Provided, that the board, in granting a variance, shall prescribe appropriate conditions and safeguards, and may require such evidence and guarantee or bond as it may deem necessary to enforce compliance with the conditions attached.” (emphasis added) (emphasis added)

Variations should be avoided unless absolutely necessary, as they otherwise serve to undermine the integrity of the Zoning Code and Comprehensive Plan.

During staff meetings with the professional planning firm and architect, Staff has been informed that it will be necessary to close/vacate certain elements of the plat of Market South Second:

1. Certain utility easements which would frustrate the location of currently proposed development,
2. The 35' Building Line setback as imposed by the plat,
3. The “50' Radius, Temporary Turn Around Subject To Vacation When Street is Extended To South” cul-de-sac turnaround [easement] as imposed by the plat,
4. The Deed of Dedication / Restrictive Covenants to the extent of removing the restriction limiting use of the lots to industrial,

The Variance application would not be necessary if the developer would petition to close or partially close the right-of-way for the necessary width at the same time as petitioning for the partial vacation/closure of the plat to the extent necessary to remove the interfering easement(s), Building Line setbacks, and restrictive covenants as listed above.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Ricky Jones with Tanner Consulting of 5323 S. Lewis Ave., Tulsa, was present. Wilson asked which of the applications would be withdrawn, and Mr. Jones stated that he was withdrawing Agenda Item 4, BBOA-459, as it was no longer needed. Wilson acknowledged the withdrawal and stated that no action would be taken.

Ricky Jones described the proposed development as a high-end multi-family project on land already platted behind the *Tire Barn* – a vacant piece of property. Mr. Jones stated that when the application was filed, they didn't have all the details on the project as they do now. Mr. Jones stated that he could take two (2) different steps by filing a PUD, or come to the Board of Adjustment with a Special Exception for the use. Mr. Jones supplied the Board with a two (2) copies of a conceptual site plan, an aerial map showing the location, and copies of documents prepared by the attorney and signed the property owners releasing certain private deed restrictions [Restrictive Covenants of Market South Second]. Chair Jeff Wilson asked Erik Enyart if he had a copy of this document, and Mr. Enyart responded that he had been provided a copy earlier that day. Mr. Jones stated that they will not have to show a hardship, just that the Special Exception is within the spirit, harmony, and intent of the Code and not injurious to the neighborhood or public welfare. Mr. Jones stated the purpose of the PUD is to permit flexibility within the development to best utilize the unique features of the particular site, but added that this site was flat. Mr. Jones explained that, rather than attempt a PUD, he chose to bring it in front of the Board of Adjustment, as it would eliminate an extra 90-day process involved in getting a PUD approved. Mr. Jones agreed that all the bulk and area requirements in the Zoning Code for the RM-2 district will be met. Mr. Jones stated that the parties to the east of the property are excited about the development.

Ricky Jones, in response to a question from the Board, stated the Board should word its Motion to Approve based on the submitted conceptual site plan and subject to returning to the Board for approval of the detailed plans, including certain building elevations. Mr. Jones addressed Erik Enyart and asked, from a theoretical planning standpoint, whether or not the Board could approve the uses, only for the Planning Commission to deny the use if a PUD was not granted. Mr. Enyart stated that he did not know but supposed it would theoretically be possible.

Wilson explained that the Board of Adjustment was a quasi-judicial board, and that the Planning Commission reviewed detailed site plans, elevations, and other such details.

Mullins stated that he wasn't comfortable about approving something he doesn't know about.

Enyart explained that he had had a meeting with the developer about a month ago when first approached with the project. Mr. Enyart stated that he was under the impression that the developer would do a Special Exception with a PUD, or a downzoning from commercial to multi-family with a PUD. When the application was filed, he was told that a PUD would not accompany this application, and he should think about whether or not it would be appropriate to do a PUD also. Mr. Enyart stated his analysis didn't follow until about a week ago, and apologized to the developer's planning firm for not responding to

the question more quickly. Mr. Enyart stated his recommendation was to approve subject to a PUD based on the Comprehensive Plan, the Appearance Corridor District, and development trends in Bixby favoring PUDs for major developments over straight zoning. Mr. Enyart expressed regret that there had not been more communication between staff and the developer's planning firm prior to this hearing.

Rick Jones agreed that a PUD will be filed if it made the Board more comfortable, assuming they can get an approval of the use tonight.

Mullins questioned the normal process and sequence for zoning property and PUDs.

Enyart answered in this case it is a little unusual because the zoning is already in place, but it does require some form of zoning approval. Mr. Enyart stated that a PUD would not necessarily be required, but at the discretion of the Board, if it felt uncomfortable in being put in the position to review detailed site plans, it could be referred to the Planning Commission.

Ricky Jones stated if the Board was to approve without the condition of a PUD, he would have to meet all the requirements currently published in the zoning code. Mr. Jones added that if that any part would not be met, he would have to file a PUD or a Board of Adjustment application, but intended to meet all of the requirements. Mr. Jones asked Erik Enyart, if the Board could approve the uses without the condition of a PUD, would that work?

Enyart answered the main reason for recommending a PUD was that we didn't have the detailed development standards with the initial application, which is typically submitted with a PUD. Mr. Enyart added that, if the developer is willing to propose an alternative solution which is to go through the motions of a PUD but with the Board of Adjustment reviewing the plans, at the Board's discretion.

Ricky Jones argued that he is not willing to do that and if he was to file a PUD he would go straight to the Planning Commission and City Council. Mr. Jones asked the Board if this is an appropriate use on the location, yes or no, or to consider yes with a PUD.

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

A MOTION to Approve the BBOA-458, subject to a PUD as recommended by Staff, was made by Dave Hill and SECONDED by Jeff Wilson. Roll was called:

ROLL CALL:

AYE: Wilson, Hill, King, Jeffries, Mullins

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 5:0:0

Chair Jeff Wilson stated that there would be a break until 8:15 PM. After the break, the meeting was called back to order.

2. BBOA-460 – JR Donelson for Oman Guthrie. Discussion and possible action to approve a Special Exception per Zoning Code Section 11-11-8 for an alternative compliance plan to parking and screening requirements in the CH Commercial High Intensity District.  
Property Located: 7228 E. 151<sup>st</sup> St. S.

Chair Jeff Wilson introduced the item and called on Erik Enyart for the staff report and recommendation. Mr. Enyart summarized the staff report on page 29 of the agenda packet:

Applicant: JR Donelson for Oman Guthrie  
Location: 7228 E. 151<sup>st</sup> St. S.  
Land Area: 3.4 acres, more or less  
Zoning: IL industrial  
Request: Special Exception per Zoning Code Section 11-11-8 for an alternative compliance plan to parking and screening requirements in the CH Commercial High Intensity District

Surrounding Zoning and Land Use:

North: (Across 151<sup>st</sup> St. S.) AG; Agricultural  
South: RMH; Shadow Valley Mobile Home Park.  
East: AG; Agricultural and Conrad Farms commercial.  
West: CS; Ace Auto Sales, GoBob Pipe & Steel Sales, LLC, and the Bixby Chiropractic Clinic.

Previous / Related Cases: (Not a complete list)

BZ-81: Subject property part of that area approved for rezoning from RMH to IL in 1980.

AC-05-01-01: Commercial buildings at the southwest corner of the subject property approved by the Architectural Committee on January 27, 2005.

AC-07-08-06: Architectural Committee reviewed the building plans for proposed building on subject property August 20, 2007 and continued the case pending the resolution of Zoning issues. AC took no action on September 17, 2007 due to discovery of lack of jurisdiction (not within 300' Corridor Appearance District).

BZ-335: Subject property requested for 'downzoning' to CH – pending PC review October 15, 2007.

BLPAC-1: Landscaping Plan Alternative Compliance plan per Zoning Code Section 11-12-4.D – pending PC review October 15, 2007.

Background Information:

The proposal is to construct a 125' X 50' (6,250 square feet) metal building in the southeast corner of the subject property of approximately 3.4 acres. It is anticipated that the building will appear similar to the metal buildings constructed toward the west end of the property, which are leased to primarily Use Unit 15 contractor's offices/equipment storage type facilities. This building is understood to be used for storage for the Spectrum Painting business.

In addition to the screening and parking issues concerned by this Special Exception application, there are other Zoning issues, setbacks and landscaping, addressed more fully as follows:

Setbacks. The subject property is zoned IL, and the abutting property to the east and south is zoned RMH residential. The required setback to the east and south, per Section 11-7F-4 Table 2, from an R Residential district, is 75', and the building is proposed to be 13' from the east line, and 12' from the south line. The Applicant has requested, per BZ-335, a 'downzoning' from the IL district to the CH district, which has no setback requirement. The Planning Commission will consider this request on October 15, 2007.

Landscaping. Zoning Code Sections 11-12-3.A and .C requires a landscaped area along the street yard, which shall be no less than 15' in width as 151<sup>st</sup> St. S. is an arterial road. Within the landscaped area, trees are required to be planted or existing trees are required to be accounted for and included in the tree calculations. On the submitted Landscape Plan, no trees are represented as existing or proposed within the required 15' landscaped strip. The Applicant is proposing trees closer to the proposed building and along the internal driveway instead.

The Applicant has requested, per BLPAC-1, a Landscape Plan Alternative Compliance plan, which the Planning Commission will review and consider on October 15, 2007.

Analysis:

Parking. Parking required for Spectrum Painting, a Use Unit 15, per Zoning Code Section 11-9-15.D is 1 parking space per 400 square feet of floor area. At 6,250 square feet, the four (4) proposed parking spaces do not meet this standard. Loading berths as proposed exceed the one (1) required. The Applicant is requesting by this application a Special Exception for an alternative compliance plan for parking as provided in per Zoning Code Section 11-11-8.

In the submitted narrative and in previous discussions with Staff, the Applicant has stated that the intended use of the building would be to store vehicles and equipment for the Spectrum Painting business use, along with personal items including "trucks, boats, and household items."

Staff agrees with the Applicant that such use of the building would not generate much additional need for parking, and so is supportive of the Special Exception to allow for four (4) parking spaces.

Screening. Zoning Code Section 11-9-15.C requires a screening fence or wall along the south and east property lines of the entire subject property. The property does not presently have screening fencing along the south or east property lines.

The Applicant is proposing, by this application, an alternative compliance plan, as authorized by Zoning Code Section 11-11-8. Per the submitted Site Plan, the alternative compliance plan proposes the erection of a 6' privacy (screening) fence along the entire east property line, and along the east 73 feet of the south property line, which would connect to an existing chain-link fence behind the main building and smaller storage building on the property.

Although the screening proposed does not meet the strict standard of the Zoning Code, which requires full screening along the entire south property line and not just a part, Staff believes the intent of providing in the Zoning Code an allowance by Special Exception for alternative compliance plans is to recognize that some development situations and property conditions are unique, and so warrant reasonable flexibility. Staff would consider this application to be such a unique situation, recognizing the fact that the property was originally zoned Industrial 27 years ago, and screening may or may not have been required by the Zoning Ordinance and/or administrative practice at that time. Additionally, other commercial buildings toward the southwest corner of the subject property were granted Architectural Committee approval and building permits in 2005, without the requirement to install fencing or parking as required for Use Unit 15 trades and services.

Staff Recommendation. For the reasons expressed more fully above, Staff can support the requested Special Exception.

Staff notes that this report was written with the intent to consider the Zoning aspects of the new building only, and detailed research has not been conducted regarding the Zoning compliance of other existing commercial buildings previously approved for building permits. As it is beyond the scope of the current application, if any Zoning issues remain pertaining to the other commercial buildings, they may be identified in the future should the need arise.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant JR Donelson was present and indicated agreement with the Staff recommendations. Mr. Donelson reiterated the arguments set for in the letter submitted

with the application. Mr. Donelson stated that there were only to be three (3) employees that need a parking space, which work in the building to the east. Mr. Donelson described the proposed building as 'a big garage,' and stated that it would be the last to be built on the property due to the building constraints and the floodplain.

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

There being no further discussion, a MOTION to APPROVE BBOA-460 for the parking element of the Special Exception was made by Murry King and SECONDED by Darrell Mullins. Roll was called:

ROLL CALL:

AYE: Wilson, Hill, King, Jeffries, Mullins

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 5:0:0

Donelson reiterated the arguments set for in the letter submitted with the application. Mr. Donelson stated that a 6 foot screening fence would be constructed along the entire east boundary of the property, and along the south boundary for 73 feet to replace the existing 4 foot chain link fence, which ties into a 6 foot chain link fence behind the existing building which is occupied as an office right now. Mr. Donelson continued by stating that, on the west side of the existing building that is used for an office right now is another 4 foot chain link fence that continues to the west property line. Mr. Donelson stated that the 73 feet of screening along the south line of the building and along the east line of the property would effectively screen the new building. Mr. Donelson stated that, since the existing buildings have been in place for 25 years, it would be an unnecessary burden to screen the entire south line of the property.

Wilson asked if there was any one that has objected to it. No one else spoke on the item

Enyart stated that he had received only one (1) phone call, which was from the owner of the mobile home park, but that after he explained to him the situation and what was being requested, he indicated no objection.

There being no further discussion, a MOTION to APPROVE BBOA-460 for the screening fence element of the Special Exception was made by Darrell Mullins and SECONDED by Dave Hill. Roll was called:

ROLL CALL:

AYE: Wilson, Hill, King, Jeffries, Mullins

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 5:0:0

3. BBOA-461 – Steven & Donna Smiley. Discussion and possible action to approve a Variance to reduce the required front yard setback in the RS-2 Residential Single Family District, Zoning Code Section 11-7B-4.A.1, Table 3.  
Property Located: 9820 E. 119<sup>th</sup> St. S.

Chair Jeff Wilson introduced the item and called on Erik Enyart for the staff report and recommendation. Mr. Enyart summarized the staff report on page 35 of the agenda packet:

Applicant: Steven & Donna Smiley  
Location: 9820 E. 119<sup>th</sup> St. S.  
Lot Size: 9,468 square feet (approximately 0.22 acres)  
Existing Zoning: RS-2 Residential Single Family District  
Request: Variance to reduce the required front yard setback in the RS-2 Residential Single Family District, Zoning Code Section 11-7B-4.A.1, Table 3.

Surrounding Zoning and Land Use:RS-2; Residential in Cypress Pointe

Previous / Related Cases:

Background Information:

*Based on conversations with the property owner and real estate agent, Staff understands that the property has a contract for sale and the buyers are insisting on satisfaction of certain title deficiencies. Staff has not been provided with a copy of the title company's requirements, as requested, and so it is not fully known what other deficiencies are required to be rectified (e.g. full or partial closing/vacation of Building Line setback and/or utility easement imposed by the plat, as the survey documents, etc.).*

*The owner noted that he was aware of the deficiencies when he purchased the dwelling from the previous owner, and signed a waiver at that time acknowledging the deficiency and releasing the seller of responsibility for securing remedy.*

*Based on Staff interpretation of the survey, the foremost portion of the house is its northwest corner, which is 24.1' from the property line, or 9/10 foot encroached upon the Zoning setback of 25' in the RS-2 district. The house is also 5.7' encroached upon the Building Line and utility easement imposed by the plat.*

*The Board of Adjustment derives authority from and has jurisdiction over matters arising from within the Zoning Code, and so private restrictions imposed by the plat are afforded relief through vacation/closure by ordinance of the City Council and ultimately the court systems. In other words, the 5.7' encroachment on the Building Line setback and utility easement is not before the Board for consideration.*

Analysis:

*Oklahoma State Statutes Title 11 Section 44.107 provides the following test and standard for the granting of Variance:*

*“A variance from the terms, standards and criteria that pertain to an allowed use category within a zoning district as authorized by the zoning ordinance may be granted, in whole, in part, or upon reasonable conditions as provided in this article, only upon a finding by the board of adjustment that:*

*1. The application of the ordinance to the particular piece of property would create an unnecessary hardship;*

*2. Such conditions are peculiar to the particular piece of property involved;*

3. Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the ordinance or the comprehensive plan; and

4. The variance, if granted, would be the minimum necessary to alleviate the unnecessary hardship.” (emphasis added)

Similarly, the Bixby Zoning Code Section 11-4-8.A and .C provides the following test and standard for the granting of Variance:

“A. General: The board of adjustment, upon application and after notice (when notice is required) and public hearing, and subject to the procedural and substantive standards hereinafter set forth, may grant such variance from the terms of this title as will not cause substantial detriment to the public good or impair the spirit, purposes and intent of this title, or the comprehensive plan, where by reason of exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation, condition or circumstance peculiar to a particular property, the literal enforcement of this title will result in unnecessary hardship. The board shall not vary any jurisdictional requirement, such as notice. The board shall not permit by variance a principal use not otherwise permitted in the applicable district, it being the expressed spirit and intent of this title that a change of the permitted principal uses shall be made by ordinance amendment of the zoning code or official zoning map. (Ord. 288, 2-4-1975)” (emphasis added)  
And:

“C. Action Of Board: The board shall hold the hearing and, upon the concurring vote of three (3) members, may grant a variance after finding that:

1. By reason of extraordinary or exceptional conditions or circumstances which are peculiar to the land, structure or building involved, the literal enforcement of the terms of this title would result in unnecessary hardship.

2. Such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same district.

3. The variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit and intent of this title or the comprehensive plan.

Provided, that the board, in granting a variance, shall prescribe appropriate conditions and safeguards, and may require such evidence and guarantee or bond as it may deem necessary to enforce compliance with the conditions attached.” (emphasis added)

To answer the questions on the application form asking how the proposed Variance would meet the tests and standards for Variance, the Applicant has discussed the need to sell the house and how it would only affect the subject property. The Board may wish to take note of these arguments and perhaps expand on them further, and others that the Applicant may provide during public hearing and consideration of this case at the meeting.

If the Board is amenable to this application, it should identify with the Applicant how the requested Variance would be in accordance with each of the tests and standards provided in State Statutes and the Bixby Zoning Code. Staff would note that the requested 9/10 of a foot Variance should be considered the minimum necessary to alleviate any hardship, if hardship is determined.

Hill stated that the staff report discussed Staff not having been provided with the copy of the title company requirements.

Enyart answered it was not critical for what is being requested. Erik stated that the copy of the title company's requirements would only help the staff counsel the applicant of the next appropriate steps.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Steven Smiley stated he has been trying to sell the house that was built in 2001 and there was no proof of utilities in the garage.

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

There being no further discussion, a MOTION to APPROVE BBOA-461 was made by Dave Hill and SECONDED by Darrell Mullins. Roll was called:

**ROLL CALL:**

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

**OLD BUSINESS:**

Erik Enyart addressed the Chair and stated that, at the previous meeting, the issue of the Decision of Record process as practiced in Creek County was raised, and the Board had asked him to bring information in this regard. Mr. Enyart provided a copy of an example of a Decision of Record document used in Creek County. Mr. Enyart stated that Creek County's situation is somewhat different than most communities, as it has no code enforcement, and code enforcement was probably its biggest planning issue. Mr. Enyart stated that the Decision of Record was intended to emphasize the importance of the action of the Board of Adjustment and provide a written, official record of the Boards actions and as they affect, and the benefits conferred upon the real property.

The Board discussed the matter and expressed interest in the next steps to move it forward in Bixby. Mr. Enyart stated that, at the pleasure of the Board, he could place an item on the next meeting agenda for a more formal report and analysis with an action item for the Board to direct Staff to present the Board's recommendation to the City Council for discussion and possible action to amend the Zoning Code to introduce the Decision of Record.

Chair Jeff Wilson remarked that the acknowledgement by signature of the Applicant to the instrument would help reinforce the requirements placed on the approval. Mr. Wilson and Mr. Enyart discussed the adequacy of the current system of informing the applicant by letter following the disposition of the Board on the application.

**NEW BUSINESS:** None.

**ADJOURNMENT:**

There being no further business to discuss, a MOTION to ADJOURN was made by King and SECONDED by Hill. Roll was called:

**ROLL CALL:**

AYE: Wilson, Hill, King, Jeffries, Mullins

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 5:0:0

**Approved By** \_\_\_\_\_

**Chairman**

**Date:** \_\_\_\_\_