

MINUTES
BIXBY BOARD OF ADJUSTMENT
BIXBY CITY HALL, COUNCIL CHAMBERS
7:00 PM, October 06, 2008

STAFF PRESENT:

Erik Enyart, AICP, 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: Darrell Mullins, Jeff Wilson, Lonnie Jeffries, and Dave Hill.

Members Absent: Murray King.

MINUTES

1. Approval of Minutes for September 02, 2008

Chair Jeff Wilson introduced the item and asked to entertain a Motion. Lonnie Jeffries made a MOTION to APPROVE the Minutes of September 02, 2008 as presented by Staff. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Mullins, Jefferies, Wilson, & Hill

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 4:0:0

OLD BUSINESS:

Chair Jeff Wilson asked Erik Enyart if there was any Old Business. Mr. Enyart responded that there was none. No action taken.

NEW BUSINESS:

Chair Jeff Wilson stated that, upon consulting with the other Board members, BBOA-492 should not take nearly as long as the other items, and so he would like to entertain a Motion to take the agenda items out of order and consider Agenda Item # 5 (BBOA-492) at this time. Dave Hill made a MOTION to take the agenda items out of order and consider Agenda Item # 5 (BBOA-492) at this time. Lonnie Jeffries SECONDED the Motion. Roll was called:

ROLL CALL:

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

5. **BBOA-492 – James E. Graber for Bixby Public Schools.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-7A-2 Table 1 to allow an existing Use Unit 5 school facility in the AG Agricultural District.
Property located: 6941 E. 121st 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 as follows:

To: Bixby Board of Adjustment
From: Erik Enyart, AICP, City Planner
Date: Tuesday, September 30, 2008
RE: Report and Recommendations for:
BBOA-492 – James E. Graber for Bixby Public Schools

LOCATION: 6941 E. 121st St. S.
LOT SIZE: 10 acres, more or less
ZONING: AG Agricultural District
REQUEST: Special Exception per Zoning Code Section 11-7A-2 Table 1 to allow an existing Use Unit 5 school facility in the AG Agricultural District.

SURROUNDING ZONING AND LAND USE:

North: RS-2; Residential in two of the Estates at Graystone subdivisions.

South (across 121st St. S.): AG; The Three Oaks Smoke Shop on a 2-acre tract surrounded by large vacant and wooded tracts owned by Tulsa County and the City of Bixby.

East: AG; A 23-acre tract containing Bixby North Elementary and a 5-acre tract planned for a new LifeChurch church facility.

West: AG; Vacant/wooded and rural residential along 121st St. S.

COMPREHENSIVE PLAN: Low Intensity + [Existing] Vacant, Agricultural, Rural Residences, and Open Land.

PREVIOUS/RELATED CASES:

RELEVANT AREA CASE HISTORY: (not a complete list)

BBOA-329 – Jon E. Brightmire – Request for Special Exception for a 100’ tall monopole communications tower for 5-acre tract abutting to the east – Approved by BOA 05/05/1997.

BBOA-358 – Joe Gill for Bixby Public Schools – Request for Special Exception to allow a Use Unit 5 elementary school (Bixby North Elementary) on a 23-acre tract abutting subject property to the east – Approved 05/01/2000.

BBOA-466 – Travis Reynolds for LifeChurch – Request for Special Exception per Zoning Code Section 11-7A-2 Table 1 to allow a Use Unit 5 church in the AG Agricultural District for 5-acre tract abutting to the east – Conditionally approved by BOA 12/03/2007.

BLPAC-5 – LifeChurch – JR Donelson, Inc. – Request for Landscaping Plan Alternative Compliance plan per Zoning Code Section 11-12-4.D for 5-acre tract abutting to the east – Conditionally approved by Planning Commission 08/18/2008.

BBOA-391 – Mark Allen for LifeChurch – Request for Variance from sign standards of Zoning Code Sections 11-7A-3.B.2 and 11-9-21 for a Use Unit 5 church on a 5-acre tract abutting to the east – Pending BOA consideration October 06, 2008.

BACKGROUND INFORMATION:

The Bixby North Elementary was approved for Special Exception for a Use Unit 5 school in an AG Agricultural District on the adjoining 23-acre tract in 2000 (BBOA-358). The 5th & 6th Grade Center

was granted a building permit on the subject property 10-acre tract (also zoned AG) since (construction commenced in or around 2007), but evidently the City failed to notice and inform the owner that the Special Exception did not include the 10-acre tract.

ANALYSIS:

General. The subject property has been developed with a 5th and 6th grade school campus for the Bixby Public Schools system. The 5th and 6th Grade Center was primarily constructed in 2007, pursuant to a 05/15/2006 building permit, according to the Community Development Coordinator.

Zoning Code Section 11-7A-2 Table 1 allows for a Use Unit 5 school facility to be approved by Special Exception, which is requested by this application.

Similar Cases. The Board of Adjustment approved a Special Exception for the Use Unit 5 North Elementary in 2000 (BBOA-358) on the 23-acre AG tract immediately adjoining the subject property to the east. This may be considered a precedent for the current application.

Surrounding Zoning and Land Use Compatibility. The surrounding zoning is primarily AG, and surrounding uses are mixed: To the east is a 23-acre tract containing Bixby North Elementary and a 5-acre tract planned for a new LifeChurch church facility, to the west are vacant/wooded and rural residential tracts along 121st St. S., to the south is 121st St. S., and further south (across 121st St. S.) is the Three Oaks Smoke Shop on a 2-acre tract surrounded by large vacant and wooded tracts owned by Tulsa County and the City of Bixby, and to the north is residential in two of the Estates at Graystone subdivisions.

The proposed Use Unit 5 school facility would be especially consistent with the existing and approved North Elementary school campus, and would be compatible with the adjoining LifeChurch, which is under construction.

Close proximity to elementary schools has historically and today is typically considered a benefit to adjoining residential areas.

The proposed school will be compatible with surrounding Zoning and land use patterns.

Staff Recommendation. Recognizing that the Zoning Code contemplates the Use Unit 5 school facility and provides for its approval, and for all the other reasons outlined above, Staff believes that the proposed facility would be in harmony with the spirit and intent of the Zoning Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Staff recommends Approval.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. JR Donelson of 8410 E. 111th St. S. was present and stated that he was representing Bixby Public Schools and Jim Graber, representing Bixby Public Schools. Mr. Donelson stated that he and his client considered t a bookkeeping situation.

Chair Jeff Wilson asked if there were any questions or comments. There being none, Chair Jeff Wilson asked to entertain a Motion. Darrell Mullins made a MOTION to APPROVE BBOA-492. Chair Jeff Wilson SECONDED the Motion. Roll was called.

ROLL CALL:

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

2. **BBOA-489 – Norman Sahn.** Discussion and possible action to approve a Variance from the 25’ rear yard setback requirement per Zoning Code Sections 11-7B-3.B.1.b and 11-7B-4.A.1 Table 3 to allow an accessory building to be located approximately 11’ from the rear property line in the RS-2 Residential Single Family District.

Property located: Lot 18, Block 4, *Southwood East*; 9934 E. 114th Pl. S.

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:

To: Bixby Board of Adjustment
From: Erik Enyart, AICP, City Planner
Date: Monday, September 29, 2008
RE: Report and Recommendations for:
BBOA-489 – Norman Sahn

LOCATION: – 9934 E. 114th Pl. S.
– Lot 18, Block 4, Southwood East
LOT SIZE: 0.24 acres, more or less
ZONING: RS-2 Residential Single Family District
EXISTING USE: One (1) single family dwelling
REQUEST: Variance from the 25’ rear yard setback requirement per Zoning Code Sections 11-7B-3.B.1.b and 11-7B-4.A.1 Table 3 to allow an accessory building to be located approximately 11’ from the rear property line in the RS-2 Residential Single Family District.

SURROUNDING ZONING AND LAND USE: RS-2; Residential in Southwood East.

COMPREHENSIVE PLAN: Low Intensity + Residential Area.

PREVIOUS/RELATED CASES:

RELEVANT AREA CASE HISTORY:

ANALYSIS:

General. The subject property contains 0.24 acres, more or less, and a single family dwelling. It fronts on E. 114th Pl. S. and is 82’ wide by approximately 134.50’ deep, with the northeast corner clipped off by the turnaround for the east end of this cul-de-sac street.

Similar Cases. On September 02, 2008, in the case of BBOA-488, the Board of Adjustment approved an almost identical Variance from a 25’ rear yard setback requirement per Zoning Code Section 11-7B-3.B.1.b, to allow an accessory building to be located 10’ from a rear property line for property at 8416 E. 125th St. S. This case may be considered a precedent for the present application.

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. On August 28, 2008, Staff received a building permit application for the proposed accessory building and reviewed it for conformance to the Bixby Zoning Code. The building would be 25’ from north to south (paralleling the depth of the lot) and 25’ from east to west (625 square feet).

The building is proposed to be 11 feet from the rear (south) property line, and would be located in the southeast corner of the lot. The Zoning setback in the RS-2 district (in which the subject property is located) is 25’. Zoning Code Section 11-7B-3.B.1.b states:

“b. A detached accessory building shall not be located in the front or side yard, or encroach upon a minimum building setback line, but this limitation shall not apply to carports, provided the minimum required front yard or side yard or setback line is observed.” (emphasis added)

Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. Staff could not conceive how the subject property should be deemed to have Peculiar, Extraordinary, or Exceptional Conditions or Circumstances, unique to the subject property, and not generally shared by other properties in RS-2 district. If the Board is amenable to this Variance, it should identify with the Applicant how the requested Variance would be in accordance with this test and standard provided in State Statutes and the Bixby Zoning Code.

Unnecessary Hardship. The rear line of the dwelling, per GIS and aerial data, is approximately 50’ north of the rear property line. 25’ of 50’ is 50% of the rear yard area. The building would be 25’ long

from north to south. Added to the 25' rear yard setback, this leaves no room ("less than one foot," per the Applicant) between the accessory building and the dwelling, and this location in the yard would unduly encumber a significant portion of the yard area.

As stated elsewhere in this report, one of the fundamental reasons for requiring yard setbacks is to improve the quality of life afforded by significant amounts of unbroken open space, in which to recreate privately. Thus, this quality of life reason for imposing setback requirements would be compromised by the very rule, due to the configuration of the subject property.

Therefore, the strict application of this requirement, causing the accessory building to be advanced 25' deep into the rear yard from the rear yard line, would cause an Unnecessary Hardship, as it would unnecessarily restrict the reasonable use of a significant portion of the rear yard area.

Finding of No Substantial Detriment or Impairment & Minimum Necessary. Of the several fundamental reasons for imposing setback standards, some of the more important reasons include:

1. For the sake of consistency of design, mode of placement, and orientation of structures (aesthetics).
2. Improvement of the quality of life as afforded by significant amounts of unbroken open space, in which to recreate privately.
3. Setbacks operate to reduce the risk of fires spreading from house to house.
4. Setbacks are required to ensure structures, by their proximity, do not have the effect of 'crowding' or 'towering over' adjoining properties, and so maintain a reasonable distance from adjoining property lines for the benefit of neighborly relations.

Based on GIS, aerial, and satellite data, it is evident that several houses in the immediately surrounding area have accessory buildings which do not meet the 25' rear yard setback standard. Although nonconformities are not appropriate grounds for supporting a request for Variance, the proposed setbacks would be relatively consistent with the accessory building locations on surrounding lots, inasmuch as they do not meet rear yard setbacks, at variable distances.

Due to its rear yard location, it is only viewable by a few adjoining properties, and so the aesthetic value of consistency of accessory building placement is not nearly as significant were the building located in more full view of the public, such as along a street. Further, the Applicant has provided statements that adjoining properties are shielded from view of the subject property's rear yard by "existing privacy fences and vine covered chain link fencing, mature trees, and fenceline shrubs."

As stated above, the improvement to the quality of life, as would be afforded by significant amounts of unbroken open space, in which to recreate privately, would be diminished absent the Variance, as the allowable location, 25' from the rear yard line, would render a large portion of the open space encumbered by the building. Therefore, in this instance, this result of the strict application of the setback requirements would be counterproductive to the benefit the requirement is intended to bring.

Placement of the accessory structure 11' from the rear property line, and so further away from adjoining house structures, may actually operate to reduce the potential for the spread of fire from structure to structure, as compared to an allowable location 25' from the rear property line, which would be 0' ("less than one foot," per the Applicant) from the rear side of the house.

The proposed accessory building would replace an existing such building, more or less in the same location, and so would not disrupt the mode of building placement already established under existing conditions.

On August 11, 2008, the City Council authorized Staff to proceed with several possible amendments to the Zoning Code, one of which was the removal of the setback restrictions of Zoning Code Section 11-7B-3.B.1.b, falling back on other provisions of the Zoning Code which would allow accessory buildings to be 5' from all property lines.

Finally, as it would be set back 10' from the rear property line, significantly more than many other lots in the immediate area, the 'crowding' or 'towering over' effects should not be realized in the present case.

Staff would consider an 11' setback reasonable, recognizing the situation of accessory buildings on adjacent area lots and that a 5' setback is customarily considered reasonable for an accessory building.

For these reasons, Staff believes that the 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 should be considered the Minimum Necessary to Alleviate the Unnecessary Hardship.

Staff Recommendation. If the Board agrees with Staff that the arguments presented above, 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. Staff notes that the exception to this recommendation is the Peculiar, Extraordinary, or Exceptional Conditions or Circumstances finding, as described above. Staff cannot conceive of viable arguments to satisfy this determination, but would not rule out the possibility that such could be discovered and found adequate during public hearing and consideration of this case at the meeting.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Norm Sahn of 9934 E. 114th Pl. S. was present and stated that he wanted to build a shop building at the southeast corner of his lot. Mr. Sahn stated that he had removed a 16' by 20' portable building from the same location. Mr. Sahn stated that it would be a nice, attractive, permanent building. Mr. Sahn stated that the regulations would force the building right up to within a couple of feet of the back of his house. Mr. Sahn stated that the privacy fences in the area would minimize the impact of the building, and the building would improve the values in the area. Mr. Sahn stated that he needed the building in that location for the sake of needed space.

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

Chair Jeff Wilson asked if there were any further questions or comments. There being none, Chair Jeff Wilson asked to entertain a Motion. Dave Hill made a MOTION to APPROVE BBOA-489. Chair Jeff Wilson SECONDED the Motion. Roll was called:

ROLL CALL:

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

3. **BBOA-490 – Roy D. Johnsen for Seven Lakes One, L.L.C.** Discussion and possible action to approve (1) a Variance from Zoning Code Section 11-10-2.D to be permitted to locate parking spaces and areas within the street right-of-way and outside of the lot being served, (2) a Variance from parking setback requirements of Zoning Code Section 11-10-3, and (3) a Variance from the 7.5' landscaped strip standard of Zoning Code Section 11-12-3.A.2, all for a Use Unit 5 subdivision swimming pool and pool house facility in the RS-4 Residential Single Family District.
Property located: Reserve E in Block 4, *Seven Lakes I*; 12553 S. 68th E. Ave.

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:

To: Bixby Board of Adjustment
From: Erik Enyart, AICP, City Planner
Date: Monday, September 29, 2008
RE: Report and Recommendations for:
BBOA-490 – Roy D. Johnsen for Seven Lakes One, L.L.C. (a.k.a. Sheridan South Development, LLC)

LOCATION: – 12553 S. 68th E. Ave.
– Reserve E in Block 4, Seven Lakes I

LOT SIZE: 2 acres, more or less

ZONING: RS-4 Residential Single Family District

REQUEST: (1) a Variance from Zoning Code Section 11-10-2.D to be permitted to locate parking spaces and areas within the street right-of-way and outside of the lot being served, (2) a Variance from parking setback requirements of Zoning Code Section 11-10-3, and (3) a Variance from the 7.5' landscaped strip standard of Zoning Code Section 11-12-3.A.2, all for a Use Unit 5 subdivision swimming pool and pool house facility in the RS-4 Residential Single Family District.

SURROUNDING ZONING AND LAND USE: RS-4; Newly-constructed homes and vacant single-family residential lots in Seven Lakes I. A future phase to Seven Lakes (“Seven Lakes II”) is planned to the north on land also zoned RS-4.

COMPREHENSIVE PLAN: Low Intensity + [Existing] Vacant, Agricultural, Rural Residences, and Open Land.

PREVIOUS/RELATED CASES:

BZ-309 – Wynona Brooks, Trustee of Mildred A. Kienlen A Revocable Living Trust – Request for rezoning from AG to RS-4 for area including Seven Lakes I (which includes subject property) and acreage to the north and south thereof – Recommended for Approval by PC on 01/18/2005 and Approved by City Council 02/14/2005 (Ord. 901).

Preliminary Plat of Seven Lakes I – Request for Preliminary Plat approval for Seven Lakes I (includes subject property) – Approved by PC 06/20/2005 and by City Council 06/27/2005.

Final Plat of Seven Lakes I – Request for Final Plat approval for Seven Lakes I (includes subject property) – Approved by PC 10/16/2006 and by City Council 10/23/2006.

BBOA-482 – Craig Thurmond for Sheridan South Development, LLC – Request for Special Exception per Zoning Code Sections 11-7B-2 Table 1 to allow a Use Unit 5 subdivision swimming pool and pool house facility in the RS-4 Residential Single Family District on subject property – Approved by BOA 07/07/2008.

RELEVANT AREA CASE HISTORY:

ANALYSIS:

General. The subject property is Reserve E in Block 4, Seven Lakes I, and contains approximately 2 acres. It is one of the larger of several Reserve areas, planned and designed to contain ‘lake’ water feature amenities in support of the subdivision development. The proposed pool site on the subject property is an enclave toward the Reserve’s northern end, and contains a significant amount of street frontage on both S. 68th E. Ave. (forms parts of its northerly/westerly boundary) and E. 125th Pl. S. (forms part of its easterly boundary). The community swimming pool and pool house have been planned to be a part of this subdivision from the beginning of the development review process, as evidenced by the words “Pool Site” on the plat of Seven Lakes I and the dedications text contained in the Deed of Dedication and Restrictive Covenants of said subdivision.

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. While reviewing the landscape plan for the pool and poolhouse in Seven Lakes I, Staff noted that approximately 2/3 of the parking spaces were constructed on the City’s public right-of-ways for S. 68th E. Ave. The parking areas were installed some time ago.

This presents several issues; as germane to this request, two (2) of which include Zoning compliance and the matter of constructing private/privately-maintained improvements on public right-of-way. The Zoning Code requires off street parking spaces and parking areas be located on the lot being served, and so does not permit parking in the right-of-way. This issue will require approval of a Variance, as is being requested by this application. Developer’s attorney Roy Johnsen and Planning Staff agreed that

the Variance would be in order if and when the City Council approved a right-of-way Encroachment/License Agreement to allow the parking to encroach on the City's right-of-way for S. 68th E. Ave. This request was made and the City Council approved it on August 25, 2008. As a part of the approval, the Council additionally authorized Staff to approve a conditional/provisional building permit for the pool/poolhouse, being conditioned on the eventual request and approval of a Zoning Variance. Pursuant to this, Staff conditionally/provisionally signed the building permit application shortly thereafter.

This parking lot encroachment on street right-of-way presents need for three (3) Variances:

- (1) A Variance from Zoning Code Section 11-10-2.D to be permitted to locate parking spaces and areas within the street right-of-way and outside of the lot being served,
- (2) A Variance from parking setback requirements of Zoning Code Section 11-10-3, and
- (3) A Variance from the 7.5' landscaped strip standard of Zoning Code Section 11-12-3.A.2.

Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. The Applicant makes several statements which, together and/or individually, may amount to a claim that the subject property and its condition or situation is unique.

Staff could not conceive of any additional reasons to explain how the subject property should be deemed to have Peculiar, Extraordinary, or Exceptional Conditions or Circumstances, unique to the subject property, and not generally shared by other properties in RS-4 district. If the Board is amenable to this Variance, it should identify with the Applicant how the requested Variance would be in accordance with this test and standard provided in State Statutes and the Bixby Zoning Code.

Unnecessary Hardship. The Applicant makes a claim that the strict application of the Zoning Code to the subject property would result in an Unnecessary Hardship under the circumstances described in the application. If the Board is amenable to this Variance, it should identify with the Applicant how the requested Variance would be in accordance with this test and standard provided in State Statutes and the Bixby Zoning Code.

Finding of No Substantial Detriment or Impairment. Fully apprised by Staff of the most significant pertinent issues, on August 25, 2008, the City Council approved a right-of-way Encroachment/License Agreement to allow the parking to encroach on the City's right-of-way for S. 68th E. Ave.

The Board may wish to consider that this City Council action has predetermined that 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.

Finding of Minimum Necessary. The application does not appear to indicate how the requested Variance should be considered the Minimum Necessary to Alleviate the Unnecessary Hardship. Staff could not conceive of any additional reasons in this regard.

Staff Recommendation. If the Board determines that the arguments presented in the application and the analysis above, or 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 all three (3) Variances, the Board should approve the application. As detailed in the analysis above, Staff was not able to conceive of viable arguments to satisfy certain tests and standards, but would not rule out the possibility that such could be discovered and found adequate during public hearing and consideration of this case at the meeting.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Roy Johnsen of 201 W. 5th St. S., Ste. 501, Tulsa, was present and stated that the site was always recognized as the swimming pool site, and [the in-street right-of-way parking space location matter] was represented on the site plan presented to this Board when the Special Exception was reviewed. Mr. Johnsen stated that approximately 2/3 of the parking spaces were in the right-of-way. Mr. Johnsen stated that, normally, in-street parking is allowed when it is parallel parking, but that in this case, the parking spaces are [90° angle parking in orientation]. Mr. Johnsen stated that he checked around and found out that this sort of parking arrangement was the standard in Bixby, in Broken Arrow, and other cities, and that this is the way it is done. Mr. Johnsen stated that this parking arrangement was convenient. Mr. Johnsen stated that the Zoning Code provision in question was the requirement that parking [serving the land use] be located on the lot with that

use, which he described as an appropriate requirement, which applies to all uses and kinds so as not to adversely affect neighborhoods. Mr. Johnsen stated that the requirement prevents commercial parking from spilling out into residential neighborhoods. Mr. Johnsen stated that the purpose of the Zoning Code requirement in this case was, "is the parking in close proximity to the use?" Mr. Johnsen answered his question with a "yes," and stated that the purpose of the ordinance was met. Mr. Johnsen stated that the Staff Report was tough on Variances, and he disagreed with Staff on his approach. Mr. Johnsen stated that the court will ask, "What is the purpose of the code [requirement]?" Mr. Johnsen stated that the unusual circumstances in this case stemmed from the facts: the City Council granted a License Agreement to allow the parking encroachment, which demonstrated the Council determined this type of parking arrangement as appropriate. Mr. Johnsen stated that this fact distinguished this case from most properties in the City, in that the other properties do not have this License Agreement. Mr. Johnsen stated that City Hall had this type of parking arrangement, which was not uncommon in downtown areas. Mr. Johnsen stated that, in regard to the landscape question and setback, the property had 2 acres of landscaping, which was just not in front of the parking strip. Mr. Johnsen stated that the application was consistent with the Zoning Code, the City Council's action, and past practice.

Chair Jeff Wilson asked if there were any further questions or comments. Darrell Mullins clarified with Roy Johnsen that the previous case on this property was the Special Exception [per BBOA-482], which was approved in July of 2008. Mr. Mullins asked if the exhibit in that case showed the parking situation, and Mr. Johnsen stated that it did and was the same exhibit provided with this application. Mr. Johnsen presented the exhibit presented with this application, which the Board members reviewed. Erik Enyart observed that this page and the supplemental narrative page, although attached to the staff report with the other pages, apparently did not make it through the copy machine. Mr. Enyart provided the supplemental narrative page to the Board, which took a moment to read and consider it.

Chair Jeff Wilson asked Roy Johnsen if the parking would restrict the roadway, and Mr. Johnsen stated that it would not and that it was not within the curb.

Roy Johnsen stated that the City Council looked at the situation from the standpoint of utilities, and found that the sewer line was all underneath the grass area, and was satisfied.

Chair Jeff Wilson asked if anyone else wished to speak on the item.

Jerry Ivies stated that he was buying a house in this addition and saw the sign for the pool. Mr. Ivies stated "It's a selling point." Mr. Ivies stated "We're building in there," and that he would close on the property in five (5) weeks. One of the Board members asked Mr. Ivies if the parking in relation to the street would affect him, and Mr. Ivies stated, "No, it would not impact me negatively at all."

Michael Rupe indicated that he was a homebuyer in this subdivision. Mr. Rupe stated that part of the selling point was being able to park in a parking space and not within the street. Mr. Rupe stated that that was "What we intend and hope for."

Chair Jeff Wilson asked if there were any further questions or comments. There were none.

Chair Jeff Wilson asked to entertain a Motion. Dave Hill made a MOTION to APPROVE BBOA-490. Lonnie Jeffries SECONDED the Motion. Roll was called:

ROLL CALL:

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

4. **BBOA-491 – Mark Allen for LifeChurch.** Discussion and possible action to approve a Variance from sign standards of Zoning Code Sections 11-7A-3.B.2 and 11-9-21 for a Use Unit 5 church in the AG Agricultural District.
Property Located: 7071 E. 121st 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 as follows:

To: Bixby Board of Adjustment
From: Erik Enyart, AICP, City Planner
Date: Tuesday, September 30, 2008
RE: Report and Recommendations for:
BBOA-491 – Mark Allen for LifeChurch

LOCATION: 7071 E. 121st St. S.
LOT SIZE: 470' X 470' = 220,900 square feet (approximately 5.07 acres)
ZONING: AG Agricultural District
REQUEST: Variance from sign standards of Zoning Code Sections 11-7A-3.B.2 and 11-9-21 for a Use Unit 5 church in the AG Agricultural District

SURROUNDING ZONING AND LAND USE:

North: AG; A 23-acre tract containing Bixby North Elementary.
South (across 121st St. S.): AG; The Three Oaks Smoke Shop on a 2-acre tract surrounded by large vacant and wooded tracts owned by Tulsa County and the City of Bixby.
East: AG; A 23-acre tract containing Bixby North Elementary.
West: AG; A 10-acre tract containing the Bixby North 5th and 6th Grade Center.

COMPREHENSIVE PLAN: Low Intensity + [Existing] Vacant, Agricultural, Rural Residences, and Open Land.

PREVIOUS/RELATED CASES: (not a complete list)

BBOA-329 – Jon E. Brightmire: Subject property approved for Special Exception for a 100' tall monopole communications tower on 05/05/1997.
BBOA-466 – Travis Reynolds for LifeChurch – Request for Special Exception per Zoning Code Section 11-7A-2 Table 1 to allow a Use Unit 5 church in the AG Agricultural District – Conditionally approved by BOA 12/03/2007.
BLPAC-5 – LifeChurch – JR Donelson, Inc. – Request for Landscaping Plan Alternative Compliance plan per Zoning Code Section 11-12-4.D – Conditionally approved by Planning Commission 08/18/2008.

RELEVANT AREA CASE HISTORY: (not a complete list)

BBOA-358 – Joe Gill for Bixby Public Schools – Request for Special Exception to allow a Use Unit 5 elementary school (Bixby North Elementary) on a 23-acre tract abutting subject property to the north and east – Approved 05/01/2000.

BBOA-392 – James E. Graber for Bixby Public Schools – Request for Special Exception to allow a Use Unit 5 elementary school (Bixby North 5th and 6th Grade Center) on a 10-acre tract abutting subject property to the west – Pending BOA consideration October 06, 2008.

ANALYSIS:

Property Conditions. The subject property contains approximately 5 acres and has been cleared of the previous dwelling and most of the landscape business trees. Certain existing trees remain along the sides of the property as per the Alternative Compliance landscape plan approved by the Planning Commission per BLPAC-5. The land slopes gently to the south and drains to the Fry Creek Ditch.

The subject property is abutted on the north and east by a 23-acre AG tract containing the new Bixby North Elementary school complex. It is abutted on the west by a 10-acre AG tract containing the North 5th and 6th Grade Center. 121st St. S. forms its south boundary. To the south of 121st St. S., the Three Oaks Smoke Shop is located on a 2-acre AG tract surrounded by large vacant and wooded AG tracts owned by Tulsa County and the City of Bixby.

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 sign codes are primarily found in Zoning Code / City Code Section 11-9-21, but those provisions do not pertain to signs in the AG Agricultural District.

Zoning Code Section 11-7A-5.A.1 provides: “The accessory use provisions of the agricultural district pertaining to signs are applicable to accessory signs for uses permitted by special exception.”

The LifeChurch property is zoned AG, and so the following from Section 11-7A-3.B.2 applies:

2. Accessory Signs In AG District:

a. One bulletin board may be erected on each street frontage of an educational, religious, institutional or similar use requiring announcement of its activities. The bulletin board shall not exceed thirty two (32) square feet in display surface area, nor twenty feet (20') in height, and illumination, if any, shall be by constant light.

b. One identification sign may be erected on each street frontage of a permitted nonresidential use. The sign shall not exceed two-tenths (2/10) of a square foot of display surface area per lineal foot of street frontage; provided, however, that in no event shall the sign be restricted to less than thirty two (32) square feet nor be permitted to exceed one hundred fifty (150) square feet of display surface area. The sign shall not exceed twenty feet (20') in height, and illumination, if any, shall be by constant light.

c. A real estate sign advertising the sale, rental or lease of the premises may be erected on each street frontage of the premises. The sign shall not exceed eighty (80) square feet in surface area, nor fifteen feet (15') in height, and illumination, if any, shall be by constant light. (Ord. 272, 4-2-1974)

The Zoning Code strictly limits signage for allowable Use Unit 5 churches in the AG districts, and perhaps did not fully contemplate or comprehensively provide for such more intensive uses. The above subsection b. allows one “identification sign.” An “identification sign” is not defined in the definitions, and may allow for its placement on a building wall (making it a “wall sign”) or in the ground (making it a “ground sign”). Presuming the Applicant intends to use the one (1) allowable “identification sign” (perhaps in combination with an allowable “bulletin board”) as their ground sign, the Zoning Code would prevent the erection of wall signage. This application therefore makes a request for Variance to be permitted to erect wall signage.

Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. The Applicant points out that, due to the required location of the retention/detention area along the street frontage, the allowable

“road” [ground] sign location is further removed from the street than is typical for such a sign location. A drawing depicting the proposed location and other details of the proposed ground sign has been requested to support this claim. Presuming veracity, such a situation or condition may logically result in need for supplemental identification signage to attract and direct attention to the subject property, as would be necessary and appropriate for a church.

Earth Change engineering permit requirements did in fact result in the required detention area in the front of the lot, as depicted on the site plan. This inherent situation and condition of the subject property may be considered Peculiar, Extraordinary, or Exceptional Conditions or Circumstances, unique to the subject property, and not generally shared by other properties in AG district.

Unnecessary Hardship. As suggested in the “Nature of Variance” section above, a Use Unit 5 church is allowed by Special Exception in an AG district, but when permitted, it is not allowed the same measure of signage as is afforded other churches in most other Zoning districts.

Therefore, there appears to be an evident disconnect between allowing a Use Unit 5 churches in an AG district, but not similarly allowing wall signage typical, customary, and reasonably necessary for such use, which, strictly enforced, would put the Applicant at a competitive disadvantage to other churches employing wall signage. Such a disadvantage may be considered an Unnecessary Hardship on the property owner.

Finding of No Substantial Detriment or Impairment. The subject property is located on a Primary Arterial, which has been recently improved to four (4) lanes with a center turn lane. This 121st St. S. corridor is already beginning to develop with intensive uses, as readily seen to the immediate west and east for the new Bixby Public School campuses. Signage for most intensive uses does and may reasonably be expected to have signage appropriate for the speed of traffic and intensity of uses along the Primary Arterial. Therefore, it would not appear to cause substantial detriment to the public good or impair the purposes, spirit and intent of the Zoning Code or the Comprehensive Plan if the subject property was allowed signage typical, customary, and reasonably necessary for a church of this size and scale.

Finding of Minimum Necessary. In most commercial districts, building wall signage is permitted to be two (2) to three (3) square feet for each lineal foot of building wall to which the sign(s) are attached. The total south-facing building wall of the proposed building is approximately 225’, which by comparison would be allowed 450 to 675 square feet of display surface area in a commercial district. Based on the relatively small signage (93.2 square feet total in three signs) as compared to a typical commercial use, Staff would consider that the proposed building wall signage could be considered the Minimum Necessary to Alleviate the Unnecessary Hardship.

Staff Recommendation. If the Board agrees with Staff that the arguments presented in the application and the analysis above, or 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 all three (3) Variances, Staff recommends APPROVAL, subject to:

- The maximum display surface area shall be the 93.2 square feet, as proposed in the application, which may be increased only to the extent of allowing a permanent anchored area of the building wall for attached banner signage of reasonable size, as depicted in one of the provided photographs of another LifeChurch site.

Erik Enyart presented Chair Jeff Wilson with a site plan he received that day showing the proposed ground sign location behind the stormwater detention pond.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant David Bross of Claude Neon Federal Signs, Inc., 533 S. Rockford, Tulsa, was present and stated that the sign had to be put behind the [stormwater] detention pond, which reduced its visibility. Mr. Bross stated that, if the church was in another Zone, it would be allowed more signage. Mr. Bross stated that the church had to compete with all other businesses on the street. Mr. Bross stated that the church was zoned agricultural, but was not in an agricultural area.

Darrell Mullins asked David Bross to clarify a statement he had made about the ground sign being visible from two (2) streets. Mr. Bross stated that he was referring to 121st St. S. and Memorial Dr. Mr. Bross stated that there was a smoke shop across the street, which he believed had wall signage.

Lonnie Jeffries asked if the height and width of the signage was a factor in the Variance application. Erik Enyart stated that the Variance was to allow both a ground sign and wall signage, as the Zoning Code restricted the property to one (1) identification sign, and so the height, width, and display surface area were not actually a factor in the Variance, and as the question was whether or not to allow both forms of signage at all. Mr. Enyart stated that, because it was not provided for at all in the AG district, the Board was being asked to operate in absence of defined parameters as for display surface area.

David Bross presented the board with a color rendering of the wall signage.

Chair Jeff Wilson clarified with Erik Enyart that the Zoning Code would only allow one or the other of the ground sign or the wall sign.

Mark Allen with LifeChurch stated that the wall signs would act as directional signage directing people to the Kids entrance, and other entrances [and not as advertising signage].

Lonnie Jeffries and Chair Jeff Wilson discussed the display surface area of the signage as compared to other Zoning districts. Erik Enyart stated that he needed to clarify his earlier statement, and that the display surface area in fact should be a factor in the Variance decision, due to the fact that the Board was being asked to operate in absence of defined parameters, and as a blanket Variance approval would allow for any future property owner to erect as much wall signage as they wanted, if the Variance approval was not established with definite parameters. Mr. Enyart recommended the Motion include specific maximum display surface area standards for the signage.

One of the Board members expressed concern for setting a precedent.

Chair Jeff Wilson suggested the maximum display surface area standard be the same as allowed in the CG district. Erik Enyart stated that this was currently three (3) square feet per lineal foot of building wall.

Chair Jeff Wilson asked if there were any further questions or comments. There were none.

Chair Jeff Wilson made a MOTION to APPROVE BBOA-491 subject to the ordinances applicable to signs in the CG district. Darrell Mullins SECONDED the Motion. Roll was called:

ROLL CALL:

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

ADJOURNMENT

There being no further business to discuss, Chair Jeff Wilson asked to entertain a Motion to adjourn. Dave Hill made a MOTION to ADJOURN. Chair Jeff Wilson SECONDED the Motion. Roll was called:

ROLL CALL:

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

Meeting adjourned at 7:39 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary