

**MINUTES
BIXBY BOARD OF ADJUSTMENT
BIXBY CITY HALL, COUNCIL CHAMBERS
7:00 PM, NOVEMBER 05, 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 7:04 PM.

ROLL CALL

Members Present: Jeff Wilson, Dave Hill, Murray King, Lonnie Jeffries, Darrell Mullins

Members Absent: None

Approval of Minutes for October 1, 2007

A MOTION to APPROVE the Minutes of the October 1, 2007 was made by Dave Hill and SECONDED by Murray King. Roll was called:

ROLL CALL:

AYE: King, Hill, Mullins, Jefferies & Wilson

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 5:0:0

OLD BUSINESS:

1. (Continued from October 01, 2007)

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.

Chair Jeff Wilson introduced the item and called on Erik Enyart for the staff report and recommendation. Enyart summarized the staff report as follows:

Applicant: Jim Ferris for BTO Properties, LLC

Location: 13406 S. Memorial Dr.

Land Area: 0.69 acres, more or less

Existing Zoning: CG General Commercial District

Request: Variance from the Zoning Code Bixby Zoning Code Section 11-9-21.C.9.b to allow a second business/advertising sign in the CG General Commercial District

Surrounding Zoning and Land Use:

North: CG; Commercial along S. Memorial Dr. and E. 134th St. S.

South: CS; Vacant and wooded.

East: CG; S. Memorial Dr. and commercial to the east of and along S. Memorial Dr.

West: CG; Bixby YMCA.

Previous / Related Cases:

Background Information:

The Bixby YMCA sold this 'outparcel' subject property at some point in the past. The present owners, BTO Properties, LLC, are seeking a Variance to permit a second sign on the subject property. The YMCA maintains an existing ground sign with LED changeable message board toward the southeast corner of the subject property, presumably by easement back to YMCA when the land was sold.

Staff inspected the subject property on September 20, 2007, at the time of posting the public notice sign, and observed that a sign has already been erected on the property. This sign has not been granted a sign permit, nor has one been requested. Further, the Architectural Committee has not approved the sign, as required by the Bixby Zoning Code. Finally, judging on the relative location to other structures (YMCA sign, building, borrow ditch and concrete drainage structure), it is possible that the sign may not meet the 10' setback standard and it is possible it may in fact be located, in whole or in part, on Memorial Drive (US Highway 64) right-of-way. A survey would be able to demonstrate the actual physical location in relation to required setbacks and property lines.

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)

Tests and Standards for Variance. No argument has been advanced which would claim or demonstrate that the Variance meets any other test or standard for granting Variance in accordance with State Statutes and the Bixby Zoning Code, including:

- Extraordinary or exceptional conditions or circumstances which are peculiar to the land and do not apply generally to other property within the same district
- No substantial detriment to the public good or impairment to the Zoning Code or Comprehensive Plan
- Variance is minimum necessary to alleviate the unnecessary hardship.

Although not clearly describing it as such, the Applicant’s narrative suggests a claim of hardship: “If the variance is not granted, the owners and/or users of the building on the property for which the application is made will not have a sign to identify them and their business.” Staff would note that this statement is not true, as the property owner is permitted a wall sign in accordance with Zoning Code Section 11-9-21.E.2, which allows three (3) square feet of display surface area for each lineal foot of building wall.

No other argument has been advanced which would claim or demonstrate hardship would be caused by the strict application of the Zoning Code.

Additional Comments and Recommendations. Buyers of property are responsible for due diligence research and for determining the adequacy of the property prior to purchase. The subject property was purchased without a sign and this deficiency should have been accounted for and negotiated in the sale price.

The Board may also be interested in determining from the Applicant the possibility of modifying the existing YMCA sign to accommodate the subject property, or constructing a combined sign. This option could be chosen which would render the Variance unnecessary.

Finally, Staff would consider it bad policy to reward a violation of the Zoning Code by granting after-the-fact approval to an illegally nonconforming sign.

Staff Recommendation. Staff recommends Denial and recommends the Board direct the Applicant to immediately remove the illegally placed sign.

Chair Jeff Wilson acknowledged that the Applicant was not present. After further discussion, Mr. Wilson asked to entertain a Motion to Deny for failure to present.

A MOTION to Deny BBOA-457 was made by Murray King and SECONDED by Dave Hill. Roll was called:

ROLL CALL:

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

A MOTION to direct that the illegally placed be removed was made by Dave Hill and SECONDED by Murray King. Roll was called:

ROLL CALL:

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

NEW BUSINESS:

2. BBOA-462 – Wes Jones. Discussion and possible action to approve a Variance from the 750 square foot accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a 1500 square foot accessory building in the RE Residential Estate District.

Property Located: Block 1, Lot 10, Bixby Ranch Estates; 13262 E. 205th St. S.

Chair Jeff Wilson introduced the item and called on Erik Enyart for the staff report and recommendation. Enyart summarized the staff report on page 37 of the agenda packet:

LOCATION: – 13262 E. 205th St. S.
– Lot 10, Block 1, Bixby Ranch Estates
LOT SIZE: 4.8 acres, more or less
ZONING: RE Residential Estate District
REQUEST: Variance from the 750 square foot accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a 1,500 square foot accessory building in the RE Residential Estate District

SURROUNDING ZONING AND LAND USE:

North: RE; Rural residential homes and vacant lots in Bixby Ranch Estates.
South: AG; Vacant and heavily wooded in unincorporated Tulsa County.
East: RE; Rural residential homes and vacant lots in Bixby Ranch Estates.
West: RE; Rural residential homes in Bixby Ranch Estates.

COMPREHENSIVE PLAN: Rural Residential – Existing Residential.

PREVIOUS/RELATED CASES:

RELEVANT AREA CASE HISTORY:

(includes only accessory building BOA cases in Bixby Ranch Estates)

BBOA-369 – Lorrie Penrose & Garret Roth – Request for Special Exception to allow a 3,081 square foot detached garage for storing vintage vehicles for property at 20227 S. 138th E. Ave. in Bixby Ranch Estates – Approved 08/06/2001.

BBOA-371 – Michael Gonker & Rebecca L. Holloway – Request for Special Exception to allow a 1,900 square foot detached garage for property at 13108 E. 201st St. S. in Bixby Ranch Estates – Approved 09/04/2001.

BBOA-394 – Larry & Tammi McBurnett – Request for Variance to allow a 30’ X 50’ (1,500 square foot) metal garage and storage building for property at 13821 E. 203rd St. S. in Bixby Ranch Estates – Approved 11/04/2002.

BBOA-422 – Alan R. Harris – Request for Variance to allow a 1,596 square foot detached garage for property at 13118 E. 205th St. S. – Approved 06/07/2004.

BBOA-465 – Jeff Seager – Request for Variance to allow a 30’ X 40’ (1,200 square foot) accessory building for property at 14015 E. 205th St. S. – Pending BOA consideration 11/05/2007.

ANALYSIS:

Standards and Tests for Granting Variance. 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 advanced the following arguments:

- Hardship: “We have a 5 acre lot to maintain, residents of Bixby proper have only to maintain small city lots, we need more storage space.”
- Peculiarity, Extraordinary, or Exceptional Conditions or Circumstances: “This barn cannot be seen from the road, & it is needed to complete construction of our new home.”
- Finding of No Substantial Detriment or Impairment: “This variance will help us build a more valuable home, adding value to the neighborhood.”

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.

Staff understands and is sympathetic to the Applicant’s situation and desire for Variance, but questions whether such situation meets the test to qualify for unnecessary hardship as set forth in Statutes and the Zoning Code. Hardship is typically the prohibition of a use or one of its essential elements, or the unnecessary impairment of a use disallowing its proper function. Self-imposed and economic hardships are generally not considered qualifying hardships.

Staff questions the uniqueness or extraordinary or exceptional qualities of the subject property – circumstances or conditions inherent in the land, from which there is generated need for special treatment. Staff notes that all lots in the Bixby Ranch Estates are zoned RE and most appear to be in the range of 2.5 to 5 acres.

As for the finding of No Substantial Detriment or Impairment, Staff would note that four (4) applications for Board of Adjustment approval for accessory buildings exceeding the 750 square foot maximum have been granted in Bixby Ranch Estates within the past six (6) years, and so granting this and the other similar request on this agenda, BBOA-465, should not cause substantial detriment to the Public good or impair the purposes, spirit and intent of the Zoning Code or the Comprehensive Plan.

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. In this case, Staff would recommend the Board discuss and determine that the 1,500 square foot building, as proposed, would be the minimum necessary to alleviate the unnecessary hardship.

Alternatively, Staff would recommend the Board direct Staff to report to the City Council the apparent discord between the presumed original intent for the 750 square foot limitation to apply to smaller, “city lots,” and the more typical 2.5- to 5-acre lot in Bixby Ranch Estates, which has generated two (2) applications for Variance within one (1) month. The Council could direct Staff to research and prepare a possible amendment to the Zoning Code to allow for flexibility for large lot RE subdivisions, such as Bixby Ranch

Estates, recognizing the unique need to shelter larger equipment to improve and properly maintain large acreage lots. This flexibility could be achieved either by providing absolute standards (lot size, building to lot area proportionality formulae, etc.) for larger accessory buildings to be permitted by right, or by permitting them by Special Exception in RE or other R districts with large lot sizes.

Amending the Zoning Code to provide this flexibility, as appears to Staff to be warranted, would avoid the need for Variance.

Chair Jeff Wilson asked if the applicant was present and wished to speak on the item.

Applicant Wes Jones of 306 W. 126th Jenks, stated he was building a new home on the property and needed a building to store materials with accommodations of a bathroom and a lounge area to relax while still working on the home. Mr. Jones stated that he would be working on the house through the winter and that the area was 15 minutes away from the city proper, where restroom facilities were available.

Darrell Mullins asked if they were going to be contracting their own home and Wes Jones stated yes, he would be the contractor but would hire subcontractors. Mr. Jones stated that these circumstances, including not having a restroom in reasonable proximity, presented a hardship to him, and reiterated the need to purchase and protect lumber and fixtures for the house.

Lonnie Jeffries asked the Applicant if he had a timeline for construction and Wes Jones estimated between 90 to 100 days for the house to be livable.

Dave Hill recommended to Enyart to take before the City Council to change the size of accessory buildings as needed for larger lot sizes and larger equipment.

Responding to a question, Erik Enyart stated that the process for proposed amendments to the Zoning Code include inspecting the Zoning Codes of other 'peer' communities in the metropolitan area to see what their codes provide, contact the other City Planners to discuss that particular provision and how it works for their community. By using their ideas, with the direction from the City Council to proceed, he will be able to go forward with the proposal for a change.

Darrell Mullins questioned, if the Board made a recommendation to the City Council, what effect would there be for these cases at this time?

Erik Enyart answered there are two issues: (1) The disposition of this application, and (2) direction to proceed with proposed amendments to the Zoning Code.

Jeff Seager of 14015 E. 205th St. S. in Bixby Ranch Estates noted that his item would be taken up later on this agenda. Mr. Seager stated that he owned 8 ½ acres and had the same problem with needing a shop for storage. Mr. Seager stated that he needed a tractor with a front-end loader to maintain the property and did not want to keep it out in the weather. Mr. Seager stated that he knew of at least four (4) other 30' X 50' [accessory] buildings in Bixby Ranch Estates. Mr. Seager stated that he could relate to the Applicant and his need of a bigger storage building for storage of larger and more expensive items.

Mike Shoemaker of 14445 E. 205th St. S. stated that he knew the Jones and the Seagers, having gone to the same schools and lived in Bixby in the country. Mr. Shoemaker stated that they lived ‘in the country,’ and people living in the country needed to have bigger buildings to store hay or equipment for the farm workers.

Darrell Mullins questioned is a barn considered an accessory building. Darrell asked also in the city limits you have to have rules what would you come up with.

Erik Enyart responded that the proposed building, although described as a ‘barn,’ would be considered an accessory building and as the proposed use of the building would be for storage of equipment. Mr. Enyart stated that it could also be called a ‘garage’ but would still be an accessory building.

Chair Jeff Wilson suggested Mr. Enyart take the matter to the City Council to see what they would suggest.

George Welstead of 20538 S. 137th E. Ave. stated that he lived five (5) houses down from Wes [Jones’ property] and that believed the building would improve area’s property values. Mr. Wellstead stated that he had no problem with the building as long as it is taken care of, and noted “We live way out there.”

David Rush of 20539 S. 137th E. Ave. in Bixby Ranch Estates stated that he has been a resident of Bixby for 20 years and supported this application. Mr. Rush stated that he was interested in the precedents to be set because he may want to do something similar in the future.

Murray King noted that the Board had approved this type of application four (4) times in the past.

Chair Jeff Wilson added to the finding of no substantial detriment or impairment just mentioned and offered the following in regard to hardship: the size of the lots at approximately five (5) acres would have an unnecessary hardship as they would not be permitted the [adequately-sized] buildings, and such lot size circumstances are unique and different than that of city lots [in the same RE district]. Mr. Wilson stated that he believed all of these circumstances allow the application to fit the conditions required for granting Variance.

Chair Jeff Wilson asked to entertain a Motion. A MOTION to Approve BBOA-462 for the reasons cited was made by Darrell Mullins and SECONDED by Dave Hill. Roll was called:

ROLL CALL:

AYE:	King, Hill, Mullins, Jefferies & Wilson
NAY:	None.
ABSTAIN:	None.

MOTION CARRIED: 5:0:0

Dave Hill expressed appreciation to Wes Jones for doing the right thing and requesting approval[, when the same responsibility could have been skirted with no one the wiser].

Chair Jeff Wilson announced that BBOA-465 on the agenda would be considered at this time as it pertained to the same type of Variance just discussed.

3. BBOA-465 – Jeff Seager. Discussion and possible action to approve a Variance from the 750 square foot accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a 30’ X 40’ (1200 sq. ft.) accessory building in the RE Residential Estate District.
Property Located: 14015 E. 205th 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:

LOCATION: – 14015 E. 205th St. S.
– Lot 11 and a part of Lot 5, Block 4, Bixby Ranch Estates

LOT SIZE: 7.9 acres, more or less

ZONING: RE Residential Estate District

REQUEST: Variance from the 750 square foot accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a 30’ X 40’ (1,200 sq. ft.) accessory building in the RE Residential Estate District

SURROUNDING ZONING AND LAND USE: RE; Rural residential homes and vacant lots in Bixby Ranch Estates.

COMPREHENSIVE PLAN: Rural Residential – Existing Residential.

PREVIOUS/RELATED CASES:

RELEVANT AREA CASE HISTORY:
(includes only accessory building BOA cases in Bixby Ranch Estates)
BBOA-369 – Lorrie Penrose & Garret Roth – Request for Special Exception to allow a 3,081 square foot detached garage for storing vintage vehicles for property at 20227 S. 138th E. Ave. in Bixby Ranch Estates – Approved 08/06/2001.
BBOA-371 – Michael Gonker & Rebecca L. Holloway – Request for Special Exception to allow a 1,900 square foot detached garage for property at 13108 E. 201st St. S. in Bixby Ranch Estates – Approved 09/04/2001.
BBOA-394 – Larry & Tammi McBurnett – Request for Variance to allow a 30’ X 50’ (1,500 square foot) metal garage and storage building for property at 13821 E. 203rd St. S. in Bixby Ranch Estates – Approved 11/04/2002.
BBOA-422 – Alan R. Harris – Request for Variance to allow a 1,596 square foot detached garage for property at 13118 E. 205th St. S. – Approved 06/07/2004.
BBOA-462 – Wes Jones – Request for Variance to allow a 1,500 square foot accessory building for property at 13262 E. 205th St. S. – Pending BOA consideration 11/05/2007.

ANALYSIS:
Standards and Tests for Granting Variance. 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 advanced the following arguments:

- Hardship: “I desire a shop larger than [750 square feet], in order to store a tractor, boat, and misc. other equipment.”

- Peculiarity, Extraordinary, or Exceptional Conditions or Circumstances: “There are at a minimum 3 shops that are equal to 1200 [square feet] or larger in Bixby Ranch Estates already built.”
- Finding of No Substantial Detriment or Impairment: “My land is completely wooded, the shop will be located approx. 300’ from street, & there are several shops this size or larger in the subdivision.”

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.

Staff understands and is sympathetic to the Applicant’s desire for Variance, but questions whether such the circumstances could be construed to meet the unnecessary hardship test as set forth in Statutes and the Zoning Code. Hardship is typically the prohibition of a use or one of its essential elements, or the unnecessary impairment of a use disallowing its proper function. Self-imposed and economic hardships are generally not considered qualifying hardships.

Staff questions the uniqueness or extraordinary or exceptional qualities of the subject property – circumstances or conditions inherent in the land, from which there is generated need for special treatment. Staff notes that all lots in the Bixby Ranch Estates are zoned RE and most appear to be in the range of 2.5 to 5 acres.

As for the finding of No Substantial Detriment or Impairment, Staff would note that four (4) applications for Board of Adjustment approval for accessory buildings exceeding the 750 square foot maximum have been granted in Bixby Ranch Estates within the past six (6) years, and so granting this and the other similar request on this agenda, BBOA-465, should not cause substantial detriment to the Public good or impair the purposes, spirit and intent of the Zoning Code or the Comprehensive Plan.

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. In this case, Staff would recommend the Board discuss and determine that the 1,200 square foot building, as proposed, would be the minimum necessary to alleviate the unnecessary hardship.

Alternatively, Staff would recommend the Board direct Staff to report to the City Council the apparent discord between the presumed original intent for the 750 square foot limitation to apply to smaller, “city lots,” and the more typical 2.5- to 5-acre lot in Bixby Ranch Estates, which has generated two (2) applications for Variance within one (1) month. The Council could direct Staff to research and prepare a possible amendment to the Zoning Code to allow for flexibility for large lot RE subdivisions, such as Bixby Ranch Estates, recognizing the unique need to shelter larger equipment to improve and properly maintain large acreage lots. This flexibility could be achieved either by providing absolute standards (lot size, building to lot area proportionality formulae, etc.) for larger accessory buildings to be permitted by right, or by permitting them by Special Exception in RE or other R districts with large lot sizes.

Amending the Zoning Code to provide this flexibility, as appears to Staff to be warranted, would avoid the need for Variance.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item.

Applicant Jeff Seager stated that he would like to change the size of the building to be 1,500 square feet instead of 1,200 square feet as originally requested.

The Board asked Erik Enyart if it was permissible to make such a change at this time, and Mr. Enyart inspected the Public Notice as mailed to area property owners and published in the newspaper. Mr. Enyart read the following from the Public Notice, “Applicant seeks a Variance from the Zoning Code to build an accessory building of approximate size 30’ X 40’ (1200 sq. ft.) which exceeds the 750 square foot maximum floor area

standard of Zoning Code Section 11-8-8.B.5...” Mr. Enyart noted that the language stated ‘of approximate size’ but that he was not sure if a change could be allowed. After further discussion, the apparent consensus of the Board was that the use of ‘approximate’ provided for the minor deviation from the building size as advertised.

Chair Jeff Wilson asked to entertain a Motion. A MOTION to Approve BBOA-465 up to 1,500 square feet, for the same reasons as discussed in detail for BBOA-462, was made by Lonnie Jeffries and SECONDED by Murray King. Roll was called:

ROLL CALL:

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

4. BBOA-463 – Cameron R. Colt. Discussion and possible action to approve a Variance to reduce the 20’ required front yard setback in the RT Residential Townhouse District, PUD 36, Zoning Code Section 11-7B-4.A.1, Table 3.
Property Located: Lot 17, Block 1, Spicewood Villas; 10274 S. 96th 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:

LOCATION: – 10274 S. 96th E. Ave.
– Lot 17, Block 1, Spicewood Villas
LOT SIZE: 7,642 square feet (0.175 acres), more or less
ZONING: RT Residential Townhouse District with PUD 36
REQUEST: Variance from the Zoning Code to reduce front yard building setbacks in the RT Residential Townhouse District with supplemental zoning PUD 36
SURROUNDING ZONING AND LAND USE: RT; Residential homes and vacant lots in Spicewood Villas.
COMPREHENSIVE PLAN: Low Intensity.
PREVIOUS/RELATED CASES: (not a complete list)
PUD 36 – Request for PUD zoning and RT underlying zoning for Spicewood Villas – approved in January 2005 per Ordinance # 900.
Preliminary Plat of Spicewood Villas: Preliminary Plat approved by PC 03/21/2005 and by City Council 03/28/2005.
Final Plat of Spicewood Villas: Final Plat approved by PC 10/17/2005 and by City Council 10/24/2005.
PUD 36 Minor Amendment # 1 – Request for Minor Amendment for Spicewood Villas to provide flexibility to allow for 0’ and 10’, or 5’ and 5’, or any combination of two (2) side yards which ultimately results in all dwellings maintaining a 10’ separation between each other dwelling – approved by PC 09/17/2007.
Amendment to the Deed of Dedication/Restrictive Covenants of Spicewood Villas – Request for City approval of an amendment to the Deed of Dedication/Restrictive Covenants approved by PC 09/17/2007 and by City Council 09/24/2007.
RELEVANT AREA CASE HISTORY:
BACKGROUND INFORMATION:

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 City Council and property owner approval of amendments to the plat and/or through the court systems. In other words, the encroachment on the 20' Building Line setback on the plat of Spicewood Villas 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) (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 advanced the following arguments:

- Hardship: “It would require the removal of the house.”
- Peculiarity, Extraordinary, or Exceptional Conditions or Circumstances: “[Unusually] configured lot, street is [at an] unusual [angle].”
- Finding of No Substantial Detriment or Impairment: “Due to the [angle] of the street. The overage will be [imperceptible] to the naked eye.”

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 approximately ½ to 1 foot Variance should be considered the minimum necessary to alleviate any hardship, if hardship is determined.

Chair Jeff Wilson asked if any of the applicants were present.

Applicant Cameron Colt of 14404 S. Garnett was present and stated that, when he built the house, he had all the corner pins marked by an engineering company, the site plans were drawn up, a string was hung as measured off the pins, and the house footing was built based on that. Mr. Colt noted that he had had the foundation built by another contractor. Mr. Colt stated that the angle of the street or lot threw him off, so when selling the house, another engineer came out and measured and now the house shows to be off the line.

Darrell Mullins remembered when previously there was a rash of Variance applications for the same setback issues, which the Board recognized to be during the build-out of the Legacy Park subdivision.

Dave Hill discussed the responsibility of the building inspector to ensure such problems do not occur.

Erik Enyart stated that Bixby does not require someone to survey the foundation before getting approval to build, as some area communities like Owasso do, and so it is up to the owner and builder to determine where the house is to be built.

A MOTION to Approve the BBOA-463 was made by Darrell Mullins and SECONDED by Dave Hill. Roll was called:

ROLL CALL:

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

5. BBOA-464 – Carl & Betty Davis. Discussion and possible action to approve a Variance from the Zoning Code Sections 11-8-1 to allow for the construction of a duplex and Section 11-7B-4.A.a, Table 3, to reduce front and rear yard building setbacks in the RT Residential Townhouse District.
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. Mr. Enyart summarized the staff report as follows:

LOCATION: – 221 and 223 E. Breckenridge Ave.
– S. 64' of Lots 23:26, inclusive, Block 30, Midland Addition
LOT SIZE: 100' X 64' = 6,400 square feet (approximately 0.15 acres)
ZONING: RT Residential Townhouse District
REQUEST: (1) Variance from the Zoning Code Section 11-8-1 to allow for the construction of a duplex on a nonconforming lot, and
(2) Variance from Section 11-7B-4.A.a, Table 3, to reduce front and rear yard building setbacks in the RT Residential Townhouse District

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.

COMPREHENSIVE PLAN: Low Intensity – Existing Residential.

PREVIOUS/RELATED CASES: (not a complete list)

BZ-318 – Betty Davis: Subject property approved for rezoning from RS-3 to RT in October/November, 2006, Ordinance # 954.

BL-341 – Betty Davis: Subject property created by Lot-Split approved October 16, 2006.

BBOA-456 – Carl & Betty Davis – Request for 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 – Denied by the BOA 10/01/2007.

RELEVANT AREA CASE HISTORY: (not a complete list)

BZ-302 – Betty Davis: Property at the southwest corner of Parker and Dawes, addressed 222 and 226 E. Dawes, part of the north half of the block to the north of the subject property, approved for rezoning from RS-3 to RM-1 in March, 2004, Ordinance # 885.

BL-318 – Betty Davis: Property at the southwest corner of Parker and Dawes, addressed 222 and 226 E. Dawes, part of the north half of the block to the north of the subject property, approved for Lot-Split on 02/22/2005.

BACKGROUND INFORMATION:

Case History. 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.

Rear Yard Setback Variance. 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 March, 2004 per BZ-302 – Betty Davis, and approved for Lot-Split per BL-318 on February 22, 2005.

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 Code 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.

Section 11-8-1 Variance. This application is the same as was proposed per BBOA-456, which was denied by the Board on October 01, 2007. At that time, Staff was under the impression that the duplex could be constructed 'by right' if it were reoriented to front on Parker. However, a second reading of Zoning Code Sections 11-8-1 informs Staff that the Code would prohibit the construction of such a duplex when the lot does not conform to bulk and area requirements:

“11-8-1: LIMITATION ON LAND USE:

No person, firm or corporation shall use or permit to be used any land or buildings, nor shall any person, firm or corporation make, erect, construct, move, alter, enlarge or rebuild or permit the making, erection, construction, moving, altering, enlarging or rebuilding, structure or improvement, which is designed, arranged to be used or maintained for any purpose or in any manner except in accordance with the use, height, area, yard, space, and other requirements established in the district which such land, building, structure or improvement is located, except as provided by [chapter 11](#) of this title. Nothing in this title shall be deemed to require a change in plans, construction or designated use of any building, where a building permit has been lawfully issued prior to the effective date hereof, and pursuant to such permit, construction is diligently carried to completion. Upon completion, such building or use shall be deemed nonconforming and may continue as regulated by [chapter 11](#) of this title. (Ord. 272, 4-2-1974)” (emphasis added)

Staff understands that construction of a duplex will also require a Variance from § 11-8-1.

Limitations on Re-Applications. The Applicant in BBOA-456 requested the opportunity to apply for the Variance a second time, and finding in the Zoning Code no prohibition or mandatory waiting periods for re-applications, Staff accepted this new application BBOA-464.

Area Drainage Concerns. During its consideration of BBOA-456 on October 01, 2007, the Board heard testimony from two (2) neighboring property owners that the area suffers drainage problems on a neighborhood scale. Area drainage problems were used by protestants to urge the denial of BBOA-456. Staff recognizes that the area does have drainage issues, which need to be remedied by the City as funds are available and Capital Improvements plans provide, but it is not reasonable to prohibit the duplex use of a property specifically approved for zoning to allow a duplex for area-wide drainage problems, which are beyond the control of the property owner. The proper recourse for correcting area drainage issues is by petition to the City Council.

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)

The subject property has extraordinary or exceptional conditions or circumstances which are peculiar to the subject property by virtue of the zoning and subdivision approvals 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 Commission’s 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 both Variances 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 the approximately 15’ front yard setback and 9’ rear yard setback, as proposed by the original building permit application.

Chair Jeff Wilson asked Erik Enyart for clarification in regard to the fact that this Variance was on the agenda of the last meeting.

Erik Enyart stated that the case on the last month’s meeting agenda was to reduce the rear yard and front yard setbacks, due to the lot’s narrow width from north and south along Parker, and its 100 feet of frontage on Breckenridge, which would complete the mirror image of the duplexes already constructed to the north. Mr. Enyart stated that this new application has two (2) Variance components: (1) To allow for the construction of a

duplex on the lot, which does not meet bulk and area standards, and (2) To allow for the reduction of setbacks to allow the duplex to face Breckenridge.

Darrell Mullins asked if the second Variance was not a repetition of the same Variance from the last month and if there was not some kind of rule preventing the Applicant from reapplying.

Dave Hill stated this case has had its final decision and the next step should be to [appeal] to district court.

Erik Enyart stated that the Applicant approached him and asked if it would be possible to apply again, and finding nothing in the code to prohibit that he did allow for the second application.

Lonnie Jeffries stated that, at the last meeting, he expressed concern for the drainage issues, but after visiting the property and looking at the duplexes that have already been built on higher ground, he now would consider that this should be looked at as a Zoning issue and not as a flood problem.

Erik Enyart stated that this area was in the *Midland Addition* and was platted in the early 1900's. Mr. Enyart added that all the smaller city lots were intended for a house, and there was a house on this lot previously. Mr. Enyart stated that the lots are permitted to be constructed upon and the City Council did approve the rezoning with the understanding that there would be duplexes on these lots. Mr. Enyart stated that the owner does have a right to develop these lots. Mr. Enyart stated that he had consulted with the City Engineer and Public Works Director about the drainage issue, and was informed that the lots are designed to drain to the streets, and it is the City's responsibility to make any amendments to the streets to make sure they are properly drained. Mr. Enyart stated that the area drainage concerns were not logically tied to the zoning action that was in front of the board, and stated that the argument outlined in the staff report was that it was not appropriate for neighbors to attempt to tie the action of the board on a Zoning setback Variance to neighborhood drainage issues, which are really bigger than what the Applicant can control.

Chair Jeff Wilson clarified with Erik Enyart that approval the first Variance would allow the duplex to be built on the lot which does not meet bulk area requirements.

Erik Enyart noted that the Zoning Code is designed for suburban style 'greenfield' development, and the lots in the older portions of the City do not meet present standards and so require adjustments.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item.

Applicant Ronnie Davis of 19131 S. 43rd E. Ave. described the four (4) original platted 25' by 130' lots on Dawes that had been split into north and south lots, and the same action that occurred for these lots facing Breckenridge and Parker.

Darrell Mullins asked when that lot split came in affect.

Ronnie Davis stated when they had it redone to make it look the same as the duplex facing Dawes.

Erik Enyart stated the lot split was to accommodate the planned configuration of the duplexes on the lots.

Lonnie Jeffries stated that the duplex being built is going to look exactly like the other duplexes on the other end of the block.

Darrell Mullins questioned if there were any problems with the setbacks on the duplex lots on the north end of the block.

Tom Martin of 301 E. Breckenridge stated that he lives just to the east of the subject property. Mr. Martin asked why this case has been brought up again since it was denied for the same Variance at the last meeting. Mr. Martin quoted from the Zoning Code the provisions dealing with Variances and standards for granting Variances and stated that he felt this application would be a detriment to the public good. Mr. Martin clarified with Erik Enyart the applicable bulk and area standards of the Zoning Code for the RT district, and the provisions for flexibility on front setback requirements when other dwellings on the block encroach on the front setback line. Mr. Martin complained that the lot was not large enough for the proposed building in the context of required Zoning setbacks. Mr. Martin stated that he wasn't totally against this project as aesthetics go because it would help the neighborhood. Mr. Martin presented a written report and pictures of a flooding issue in the neighborhood and stated that this development would make the situation worse.

Dave Hill questioned if there were any protests against the first duplexes that have already been built, and if they where built wrong too.

Tom Martin answered that he didn't have any problems with the duplexes built on the north side of the alley, as only the duplexes on the south side would create more water flow and flooding issues. Mr. Martin stated that the alley was the highest point, and kept the water flowing to the north. Mr. Martin stated that he had lived there since 1996 and never had water in his garage until the third duplex was built. Mr. Martin stated that, within one year of the construction of the third duplex, he has had water up to 6 inches in his garage, which damaged 50 to 20 sheets of his sheet rock and 10 sheets of plywood.

Lonnie Jeffries asked about if there any ditches around Mr. Martin's property.

Tom Martin answered that a guy named Benny came down and was putting in culverts along Parker on the East side of the streets starting from Dawes. Mr. Martin said Benny had told him they were trying to drain the south side of Breckenridge, but when they dug the ditch they came across a high pressure gas line so they had to cover it all up and stop.

Mr. Martin stated that Benny came in and put culverts in for the neighbors to the North of him and had charged him 200 dollars for filling his up with dirt. Mr. Martin stated that the alley and Parker Street are damming up the water. Mr. Martin suggested the Applicant gutter everything to drain to the West and put in a swale on the back / West side of the Applicant's property to make the water run to the back.

Dave Hill made a MOTION to direct Staff to ask the City Attorney for a determination of the appropriateness of re-hearing an application already decided. (The Motion was not Seconded at this time and new Motion was made later on in the hearing of this item).

Richard Daniels of 11718 S. 104th E. Ave. stated that when he built his duplex on Jefferson Street he was told by Jim Coffey to line the duplexes up with the other houses. Richard stated that Bixby is a flood[-prone] area and there is going to be water.

Lonnie Jeffries stated that the drainage problem is for the City to address and should not be held against this case.

Red Stevenson of 205 N. Armstrong stated that this year is a 30-year record rainfall level, and rainfall is a foot over the average as of today.

Sylva Davis of 312 E. Breckenridge stated that she lived at this address for 47 years and has drainage problems, but within 10 minutes after the rain stops the water is absorbed. Ms. Davis gave credit to drainage ditches. Ms. Davis stated that she has no problem with the duplexes and added that it will improve the looks of Bixby.

Mike Daniels stated that he doesn't have a problem with the duplexes which are an asset to the community. Mr. Daniels suggested having the codes updated to 2007 with the help of the City Attorney. Mr. Daniels added that even if a duplex was to be built on the lot, it wouldn't have a back yard big enough for a 4 foot picnic table to fit. Mr. Daniels stated that none of the trees have been replaced or planted from an aesthetics point of view. He added that if the duplex is turned toward Parker, it will give more room for a back yard and straighten out the drainage problem.

Dave Hill stated that the board should wait and see what the City Attorney has to say about the case being turned down at the last meeting and then being brought back again for the same case and issues. Mr. Hill added that he has been flooded 6 months after he bought a home, and couldn't, with a clear conscious, vote for something that will put another person in that situation.

Darrell Mullins stated that he likes the duplexes but the Planning Commission had made an error in approving the lot split. Mr. Mullins suggested there should be an alternative solution for the mistakes of other boards.

Lonnie Jeffries stated the applicant didn't make the mistakes and they shouldn't be held against them. Mr. Jeffries added that Tom Martin's property is flat, causing the flood

problem, and suggested that he needed to have some ditches put in to solve the drainage issue.

Darrell Mullins questioned if there was a size specification of a home that can be put on a lot upon a lot split.

Erik Enyart answered if the proposed lot split is conforms to the zoning it can be approved.

Dave Hill asked what happens when a lot does not conform to the bulk and area requirements.

Erik Enyart answered that that is the purpose of going to the Board of Adjustment, to seek relief for situations like this where there are unique circumstances. Mr. Enyart stated the Board of Adjustment was a relief valve for situations such as this.

Darrell Mullins questioned where the error had occurred: the lot split, the building permit, or [Re-]zoning.

Erik Enyart answered that the Lot-Split was in error, and stated he suspected it was a simple oversight.

Frances Carney of 8617 E. 106th St., S. in Country Estates, described her understanding of new single family multi-family dwelling construction in Bixby and their relation to city codes.

Erik Enyart stated that the use issue was already approved by the City Council wher they rezoned the property to allow for the duplexes, multi-family dwellings. Mr. Enyart added that the subject property was rezoned after the two duplexes from the North were already built and lot split. Mr. Enyart added that there was a two year gap between the zoning, lot split, and building of the first duplex and the second applications for the land south of the alley.

Tom Martin stated there was obviously a problem with the Planning Commission that overlooked the zoning, lot split, and the building of the first duplex. Mr. Martin suggested the duplex be smaller, due to the building being too big for the lot.

Chair Jeff Wilson again suggested the board consider referring the matter to the City Attorney.

Erik Enyart pointed out a twist in that the case had two parts: One part was a Variance to allow for the duplex to be built, and the second was the setback Variance brought up at the last month's meeting.

There being no further discussion, Jeff Wilson made a MOTION to Approve the Variance from Zoning Code Section 11-8-1 to allow for the construction of the duplex as zoned. The Motion was SECONDED by Lonnie Jeffries. Roll was called:

ROLL CALL:

AYE: King, Jeffries, Mullins, & Wilson
NAY: Dave Hill
ABSTAIN: None.
MOTION CARRIED: 4:1:0

Darrell Mullins made a MOTION to take No Action in regard to the setback Variance per Section 11-7B-4.A.a, Table 3, and to direct Staff to request of the City Attorney an opinion on whether or not the Board of Adjustment can consider an application for the same action when once denied, which may allow the application to return to the agenda after opinion has been rendered and new public notice has been made. The Motion was SECONDED by Dave Hill. Lonnie Jeffries voted against the item. Roll was called:

ROLL CALL:

AYE: King, Hill, Mullins, & Wilson
NAY: Lonnie Jeffries
ABSTAIN: None.
MOTION CARRIED: 4:1:0

Chair Jeff Wilson clarified for those attending the action the Board took, and noted that there is finality to Board of Adjustment decisions.

6. Report by the City Planner on the Decision of Record process as practiced in Creek County.
7. Discussion and possible action to direct the City Planner to report recommendations for a Decision of Record process to the City Council.

Chair Jeff Wilson introduced items numbered 6 and 7 on the agenda and called on Erik Enyart for the staff report and recommendation. Mr. Enyart summarized the staff report as follows:

BACKGROUND INFORMATION:

At a regular meeting held August 06, 2007, Staff mentioned the Decision of Record as introduced in Creek County in 2006 as the method used to officially notify the property owner of the action of the Board of Adjustment, as compared to a letter sent to the applicant as practiced in Bixby. At that time, the Board had asked Staff to bring information to discuss.

At a regular meeting held October 01, 2007, Staff provided an example of a Decision of Record and discussed its purpose and administration. The Board discussed the matter and expressed interest in the next steps to move it forward in Bixby. At Staff's suggestion, the Board requested Staff to 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.

ANALYSIS:

Creek County's situation is somewhat different than most communities, as it does not require building permits or have a code enforcement officer, which make administration and enforcement of the Zoning Regulations its most serious planning deficiency. It is difficult to monitor development when there is no reporting or accounting mechanism in place to address applicable Zoning requirements prior to construction. Creek County planning staff identified the following reasons for introducing the Decision of Record process:

- 1. Reinforce the importance of the Zoning Regulations to property owners, developers, the local title abstract and closing companies, and real estate agents.*
- 2. Reinforce the importance of the actions of the Board of Adjustment, as they affect the zoning status of real property.*
- 3. Harness private sector forces for the enforcement of the Zoning Regulations. As confirmed by certain abstract companies, the Decision of Record instrument, when filed of record in the County Clerk's Office, attaches to real property, and is discovered and included through the title abstracting process.*

Recognizing that when properties are to be sold, the title abstracting and mortgage processes can often influence property owners to fulfill outstanding title/real estate obligations (e.g. mechanic's liens, tax liens, secondary mortgages, etc.), Creek County planning staff recommended, along with many other amendments, that the Decision of Record process be introduced to further supplement Creek County's efforts to enforce Zoning using such private forces.

- 4. Satisfaction of Zoning Regulation requirement. Section 8.3 of the Creek County Zoning Regulations requires that Board of Adjustment decisions and "records of its examinations and other official actions" to "be immediately filed in the office of the County Clerk and shall be a public record." This requirement had apparently been in the Zoning Regulations since their first adoption in 1967, but had not historically been practiced. This amendment was designed to fulfill this previously-unmet requirement using a simplified and standardized process and format for public record recordings.*
- 5. Provide a record of the official actions of the Board of Adjustment to the property owner/applicant.*
- 6. Ensure that important land use decisions maintain visibility to subsequent landowners and other interested members of the Public through the abstracting process and are recorded for the purpose of making them available to public inspection, as are all other instruments affecting real property (e.g. easements, oil and gas lease assignments, journal entry of judgments, etc., etc.).*

Attached are three (3) examples of a Decision of Record, one showing the completed form as recorded with the County Clerk and the other two prior to completion and recording.

If the Board is amenable to moving this forward, it may direct Staff to report the above to the City Council. If Council gives Staff authorization to proceed with working on the amendment, the next steps would be to send the matter to the City Attorney for determination of appropriateness and legality within statutory parameters and Bixby's ordinance authority, advertise the matter for public hearing and recommendation by the Planning Commission, and City Council consideration of an ordinance to amend the Zoning Code.

After some discussion, Murray King made a MOTION to direct Staff to forward the mater to the City Council. The Motion was SECONDED by Darrell Mullins. Roll was called:

ROLL CALL:

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

ADJOURNMENT:

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

ROLL CALL:

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

Meeting adjourned at 8:55 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary