

**MINUTES
BIXBY BOARD OF ADJUSTMENT
BIXBY CITY HALL, COUNCIL CHAMBERS
7:00 PM, May 05, 2008**

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 7:00 PM.

ROLL CALL

Members Present: Jeff Wilson, Murray King, Lonnie Jeffries, and Dave Hill.

Members Absent: Darrell Mullins.

MINUTES

1. Approval of Minutes for March 03, 2008

Jeff Wilson made a MOTION to APPROVE the Minutes of March 03, 2008. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: King, Hill, Jefferies, & Wilson

NAY: None.

ABSTAIN: Hill.

MOTION CARRIED: 4:0:0

2. Approval of Minutes for April 07, 2008

Dave Hill made a MOTION to APPROVE the Minutes of April 07, 2008. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: King, Hill, Jefferies, & Wilson

NAY: None.

ABSTAIN: Hill.

MOTION CARRIED: 4:0:0

OLD BUSINESS: None.

NEW BUSINESS:

3. **BBOA-472 – Acura Neon, Inc. for Valley National Bank.** Discussion and possible action to approve a Variance from Zoning Code Section 11-9-21.C.2 to allow an electronic / LED-lighted variable message board sign in the CG General Commercial District.
Property Located: 13112 S. Memorial Dr.; Lot 1, Block 1, VNB Addition
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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: – 13112 S. Memorial Dr.
– Southwest corner of the intersection of Memorial Dr. & 131st St. S.
– Lot 1, Block 1, VNB Addition

LOT SIZE: 1 acre, more or less

ZONING: CG General Commercial District

REQUEST: Variance from Zoning Code Section 11-9-21.C.2 to allow an electronic / LED-lighted variable message board sign in the CG General Commercial District.

SURROUNDING ZONING AND LAND USE:

North: CG & RS-1; Church building, vacant lot, and commercial.

South: CG & RS-1; A vacant/underutilized commercial building and a commercial building.

East: CG; The Kum & Go gas station and a strip commercial shopping center.

West: RS-1 and AG; Rural residential along 131st St. S.

COMPREHENSIVE PLAN: Medium Intensity + [Existing] Commercial Area.

PREVIOUS/RELATED CASES:

BBOA-373 – Bill Ramsey – Request for Special Exception to place a temporary sales building for the Use Unit 17 Automotive and Allied Activities sale of trucks and horse trailers in a CG district – Approved by Board of Adjustment 11/05/2001.

AC-04-02-01 – Request for approval for an exterior remodel for the former Tom’s BBQ – Approved by Architectural Committee 03/15/2004.

Preliminary & Final Plat of VNB Addition – Request for Preliminary & Final Plat approvals and certain Waivers/Modifications for VNB Addition – Approved in February, 2008.

RELEVANT AREA CASE HISTORY:

BACKGROUND INFORMATION:

Electronic / LED Signage Historically. Certain LED signs have been approved in Bixby in the recent past. The staff report for BBOA-383, approved by the Board of Adjustment May 06, 2002, indicated the first Electronic / LED sign permitted in Bixby was for the Carpet Center (southeast corner of the intersection of 121st St. S. and Memorial Dr.), which was in fact approved by the Board of Adjustment May 01, 2000 per BBOA-357. The first one approved may actually have been the Citizens Security Bank, which was granted Board of Adjustment approval per BBOA-343 for an electronic message board sign for its location at 14821 S. Memorial on May 03, 1999. It would take further research to determine if there were others previously (as banks have often displayed time and temperature for decades now) and to account for the number of Electronic / LED signs, reported to be approaching 20, which exist in Bixby, primarily along S. Memorial Dr.

Electronic / LED-lighted signs are not specifically addressed in the Zoning Code, which is a notable omission. It cannot be assumed that the language which today restricts Electronic / LED-lighted signage contemplated the technology, or more importantly, its advancement in recent years in terms of affordability, quality, and pervasiveness. The language is assumed to be from the original 1974 Zoning Ordinance # 272 and to have originally contemplated the internally-illuminated plastic-faced signage, and similar signage, which ‘blinked’ and flashed intermittently to attract attention.

Possible Zoning Code Text Amendment. The City Council has expressed a desire to remove the prohibition on Electronic / LED-lighted signage. The Planning Commission is currently reviewing a possible amendment to the Zoning Code to allow Electronic / LED-lighted signage by Special Exception, pursuant to the Council’s expressed desire and upon the advice and input from the City

Attorney. The Planning Commission will review the amendment at a 3:00 PM, May 05, 2008 Special-Worksession meeting, and will consider it and give recommendation to the City Council in its regular meeting on May 19, 2008.

ANALYSIS:

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. Electronic / LED-lighted signs may violate the Bixby Zoning Code Section 11-9-21.C.2, which provides:

“2. All signs shall be of a constant light. No flashing or intermittent type of lighted signs are allowed.”

Staff has observed Electronic / LED-lighted signs similar to the Sonic Drive In sign, and would consider that they are in fact not of constant light, by necessary function of the technology which relies on turning individual or clusters of Light Emitting Diodes (LED) on and off in order to change the imagery and message. Staff has observed also that such LED signs may be programmed to flash or be turned on/off, in whole or in part, intermittently. LED signs would not comply with the Zoning Code restriction cited above, and so require a Variance from this restriction.

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:
 - “1) Other banks and businesses are allowed to use this form of advertising and this type of sign in the City of Bixby.
 - 2) Valley National Bank has adopted this type of sign as a standard in all of their new locations. The enforcement of the city code would not allow them to keep the standard appearance of their bank uniform with other new sites.
 - 3) Valley National uses this type of sign as a form of advertising their bank promotions and customer services.”
- Peculiarity, Extraordinary, or Exceptional Conditions or Circumstances: “This new banking facility is located in the same district as other banking facilities who are permitted to use this type of sign.”
- Finding of No Substantial Detriment or Impairment: “The proposed sign will be located along the Hwy 64 corridor in front of the building; this sign will not be visible to any residential areas. This sign will have an architectural appearance along with the same function as man[y] of the other signs in this commercial area.”

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 Recommendation. 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 “minimum necessary to alleviate any hardship” standard should be considered not applicable, or otherwise inherently satisfied, as this Variance seeks a qualitative and not quantitative form of relief.

Erik Enyart stated that he had a Special-Worksession meeting of the Planning Commission that day at 3:00 PM, which discussed a proposed new ordinance to allow LED-lighted signage. Mr. Enyart added that the Commission’s discussion focused on the aesthetics and safety considerations of such signage.

Chair Jeff Wilson called on the applicant to present the case.

Mir Khezri of 1801 N. Willow Ave., Broken Arrow, stated that this case was not any different than any other signage with the LED lights that have already been approved in Bixby, and read from a prepared list including *Walgreen's*, *ERgent Care of Green Country*, the *Carpet Center*, *Bentley Park*, *Grand Bank*, the Bixby Public Schools' sign at [Fry Creek], and *Sonic Drive-In*. Mr. Mir added that his client wants to use the sign to compete with all other businesses which had similar signs. Mr. Khezri stated that the sign would look exactly like all the other Valley National Bank location's signs. Mr. Khezri stated that, in a couple to three (3) months, [Bixby's Zoning Code will have been amended, removing the LED-lighted sign prohibition] the proposed sign would not even require a Variance.

Chair Jeff Wilson asked where the other branches were located, and Mr. Khezri responded that there was one located at 81st St. S. and Yale Ave. and one at Utica Square.

Chair Jeff Wilson questioned if the Valley National Banks in Tulsa were in compliance with the Tulsa Zoning Code, and Erik Enyart stated that the City of Tulsa's Zoning Code explicitly allowed on-premise LED-lighted signs with certain performance and appearance standards.

Chair Jeff Wilson asked if there were any further questions or comments. There being none, Mr. Wilson made a MOTION to APPROVE BBOA-472, based on finding that the criteria for granting Variance was satisfied as per the discussion and the City Planner's report, and because of the situation that other businesses have such signs, and so an unnecessary hardship would result if the Applicant were forced to compete with these other businesses having such signs.

Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

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

4. **BBOA-473 – Lovemor Enterprises, LLC.** Discussion and possible action to approve a Variance from Zoning Code Section 11-7B-4.A.1, Table 3 to reduce, by approximately 7.1 feet, the 35' required front yard setback in the RS-1 Residential Single Family District.
Property Located: 13011 S. 78th E. Ave.; The S/2 of Lot 7, Block 3, *Clyde Miller Acreage*
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Chair Jeff Wilson introduced the item and called if the Applicant was present and wished to speak on the item. The Applicant was not present.

Erik Enyart stated that he had not seen or heard from the Applicant since the application was submitted.

Dave Hill addressed the Chair and asked if it was not the Board's policy to deny applications if the Applicant failed to attend to represent the application. The Board members indicated agreement but indicated preference for Continuing the item to allow the Applicant to attend. Chair Jeff Wilson asked to entertain a Motion for a Continuance so the Applicant can be present.

Dave Hill made a MOTION to CONTINUE BBOA-473 to the June 02, 2008 regular meeting so the Applicant can be present. Chair Jeff Wilson SECONDED the Motion. Roll was called:

ROLL CALL:

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

5. **BBOA-474 – Patrick Roark.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-7A-3.A to allow one or more wind energy conservation systems to be installed on the roof line of the dwelling on land in the AG Agricultural District.
Property Located: 12830 S. Mingo Rd.

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: 12830 S. Mingo Rd.
LOT SIZE: 3 acres, more or less
ZONING: AG Agricultural District
REQUEST: Special Exception per Zoning Code Section 11-7A-3.A to allow one or more wind energy conservation/conversion systems to be installed on the roof line of the dwelling on land in the AG Agricultural District.

SURROUNDING ZONING AND LAND USE: AG; Single-family rural residential and vacant tracts along an unnamed private drive to the west and agricultural to the north, east, and south.

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

PREVIOUS/RELATED CASES:

BBOA-287 – Benjamin Dixon – Request for Special Exception for a double-wide manufactured home on previously 6-acre tract (including part of subject property) – Conditionally Approved by BOA January 03, 1995. Temporarily re-approved June 1, 1998 and given 90 days to remove the unit.

BBOA-297 – Mark Parker – Request for Special Exception for a second existing mobile home on previously 6-acre tract (including part of subject property) – Approved for 3 years by BOA April 17, 1995. Temporarily re-approved June 1, 1998 and given 30 days to remove the unit.

BL-189 & 190 – Benjamin Dixon – Request for Lot-Split involving subject property – Conditionally Approved by PC March 17, 1995.

BL-278 – Benjamin Dixon – Request for Lot-Split to separate subject property from the now-existing 3-acre tract abutting to the west – Administratively Approved by Staff March 14, 2003.

RELEVANT AREA CASE HISTORY:

ANALYSIS:

By Special Exception, the Zoning Code allows wind energy conservation/conversion (WECS) systems (small-scale electric windmills) accessory uses in the AG district.

The current application is to allow for the installation of roof-mounted WECS units. Based on the provided information on WECS unit specifications, it appears the units will be of size (50” diameter propeller) similar to roof-mounted satellite dishes (approximately 40”), and so would appear to be non-obtrusive.

The surrounding zoning is AG, and surrounding land uses are primarily agricultural, with rural residential to the west along an unnamed private drive. Windmills have historically and today are often found in agricultural and rural residential settings.

The proposed WECS units, and installation methods, must be approved by the Building Inspector in accordance with building and electrical codes.

Staff Recommendation. Recognizing that the Zoning Code contemplates the technology and provides for its approval, and recognizing the surrounding zoning and land use patterns, Staff believes that the proposed wind energy conservation systems 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 called on the Applicant to present his case.

Applicant Patrick Roark of 12830 S. Mingo Road stated that his house was total electric, and that he had talked to ONG about the price to run natural gas to his property, and determined that it would be \$12,000 to have the natural gas lines extended, plus the cost to convert the house to receive and use natural gas, and the total was about \$20,000. Mr. Roark stated that he had determined that the wind mills would be more efficient on energy and save him money in the long run. Mr. Roark added that he had also discussed his plans with his neighbors and they indicated they were for the project. Mr. Roark provided exhibits showing the proposed system (which were included in the agenda packet) and described them to the Board.

Dave Hill asked how many units he would be using, and Mr. Roark responded he planned for two (2).

Patrick Roark stated that the system was very quiet, and had a six (6) mile per hour startup speed, and stated that he did not want tower-mounted units. Mr. Roark stated that he may also want to use solar-electric panels. Mr. Roark stated that the proposal would reduce hydrocarbon usage, and noted that he was in the oil and gas business. Mr. Roark stated that he may also need a Variance due to the maximum Kilowatt Hour number of the definition of [Wind Energy Conversion System] in the Zoning Code, and asked if the maximum was per day, per month, or per year. Erik Enyart responded that the Zoning Code did not specify, and so with an open-ended standard, he did not know how Mr. Roark could be out of compliance.

Murray King clarified with Patrick Roark the system's height and width. Mr. King also questioned the spacing between his and the neighbors' houses. Patrick Roark answered that there were four (4) houses on that private road behind his house.

Chair Jeff Wilson asked to entertain a Motion. Murray King made a MOTION to APPROVE BBOA-474. Chair Jeff Wilson SECONDED the Motion. Roll was called:

ROLL CALL:

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

6. **BBOA-475 – Jeff Seager.** Discussion and possible action to approve a Variance from Zoning Code Sections 11-7B-3.1.b and 11-8-8.B.5 to allow a 30' X 50' (1500 sq. ft.) accessory building, previously approved as to size per BBOA-465, to be constructed in the side yard 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 Zoning Code Sections 11-7B-3.1.b and 11-8-8.B.5 to allow a 30’ X 50’ (1500 sq. ft.) accessory building, previously approved as to size per BBOA-465, to be constructed in the side yard 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:

BBOA-465 – Jeff Seager – Request for Variance to allow a 30’ X 40’ (1,200 square foot) accessory building subject property at 14015 E. 205th St. S. – Approved by BOA 11/05/2007 and permitted to be 1,500 square feet.

RELEVANT AREA CASE HISTORY:

ANALYSIS:

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 Applicant applied for a building permit for an accessory building, as approved by the Board of Adjustment per BBOA-465 on November 05, 2007. Staff observed that the accessory building would be located in the side yard, rather than the rear yard (all that part of the lot behind the rear line of the dwelling). Zoning Code Section 11-7B-3.B.1.b provides:

“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).

Additionally, Zoning Code Section 11-8-8.B.5 provides:

“In the RE and RS districts, detached accessory buildings may be located in a rear yard, provided the accessory building in the aggregate do not cover more than twenty percent (20%) of the area of the rear yard or exceed seven hundred fifty (750) square feet of floor area, whichever is less.” (emphasis added).

Therefore, a Variance from these two (2) code provisions would be required to allow an accessory building in the side yard as proposed.

The Applicant has stated that the land slopes severely [downward] from south to north, which could be considered circumstances unique and different than that of a typical property in the RE district. The Applicant’s claims suggest that, due to this condition, hardship (“costly and difficult,” and “create a substantial cost increase”) would result if the rear-yard-only location requirement was strictly applied.

Additionally, on November 05, 2007, when the Board of Adjustment approved BBOA-462 and BBOA-465, among other things, it found that the size of these lots, at approximately five (5) and nine (9) acres, respectively, were circumstances unique and different than that of more standard ‘city lots’ in the RE district, and that strict application of the 750 square foot maximum size restriction would cause an unnecessary hardship, as they would not be permitted adequately-sized accessory buildings. This same unique circumstance exists in the current application, and so the same argument could be used in the justification of the present Variance.

Of the several fundamental purposes for imposing restrictions on the placement of primary and accessory buildings, the primary reason is for the sake of consistency of design, mode of placement, and orientation of structures (aesthetics). In respect to a typical lot in an RE district and even in comparison to surrounding parcels, the subject property is quite large, and so an accessory building would not be as significant a feature as it would were the lot smaller. Additionally, due to the heavily wooded condition of the subject property and the respective location of the accessory building in relation to the principal dwelling and property lines, the accessory building should not be so aesthetically unappealing. In support of this fact, due to the heavy tree coverage of the lot, Staff was not able to view the principal dwelling from the public street, when posting the public notice sign on the property.

Per the submitted site plan, the front line of the accessory building is proposed to be in-line from north to south with the principal dwelling. This condition should also help remove any potential for detriment due to aesthetic considerations contemplated by the rear-yard-only restriction of the Zoning Code.

Also for these reasons, Staff believes 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 that the Variance would be 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.

Chair Jeff Wilson called on the Applicant to present his case.

Jeff Seager of 14015 E. 205th St. S., explained that the elevation of the property caused a slope level problem and he needed the Variance to allow for the building to fit. Mr. Seager stated that, when the house was put in, a level area was left from where the hill was cut to build the house, and that level area was where the garage building would be built. Mr. Seager stated that there was an aerobic septic system in the rear yard, making that area unsuitable for building the garage. Mr. Seager stated that it would cost a fortune in fill dirt alone to be required to move the building to the rear yard.

Chair Jeff Wilson asked if there were any further questions or comments. There being none, Mr. Wilson made a MOTION to APPROVE BBOA-475, based on the findings in the City Planner's report and the testimony of the applicant, demonstrating that the criteria for granting Variance were met. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

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

ADJOURNMENT

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

ROLL CALL:

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

Meeting adjourned at 7:39 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary