

**MINUTES**  
**BIXBY BOARD OF ADJUSTMENT**  
**BIXBY CITY HALL, COUNCIL CHAMBERS**  
**7:00 PM, June 02, 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, Lonnie Jeffries, and Dave Hill.

Members Absent: Darrell Mullins and Murray King.

MINUTES

1. Approval of Minutes for May 05, 2008

Dave Hill made a MOTION to APPROVE the Minutes of May 05, 2008. Lonnie Jeffries SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Hill, Jefferies, & Wilson

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 3:0:0

OLD BUSINESS:

2. **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. 78<sup>th</sup> E. Ave.; the S/2 of Lot 7, Block 3, *Clyde Miller Acreage*

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: – 13011 S. 78<sup>th</sup> E. Ave.  
– The S/2 of Lot 7, Block 3, *Clyde Miller Acreage*  
LOT SIZE: 21,767 square feet; ½ acres, more or less  
ZONING: RS-1 Residential Single Family District

REQUEST: 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.

SURROUNDING ZONING AND LAND USE: RS-1; Single-family residential in Clyde Miller Acreage and adjoining unplatted residential tracts.

COMPREHENSIVE PLAN: Low Intensity / Corridor + [Existing] Residential Area.

PREVIOUS/RELATED CASES: Upon a cursory search of City Zoning applications, Staff did not find when or under what circumstances the Clyde Miller Acreage and adjoining unplatted residential area were initially zoned or rezoned to RS-1. No other cases were found.

RELEVANT AREA CASE HISTORY: Upon a cursory search of Board of Adjustment cases in Clyde Miller Acreage and adjoining unplatted residential tracts, Staff found no local precedent for a front-yard setback Variance.

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 RS-1 district requires a front-yard setback of 35 feet. According to the provided survey, at its closest point, the house is 49.9 feet from the edge of 78<sup>th</sup> E. Ave. right-of-way, which is a standard 50' in width. Also according to the survey, the structure is recessed by two (2) feet along the north side of the structure, where the garage would be attached, and so would be 51.9 feet from the edge of the right-of-way. The Applicant is proposing a 24' X 24' attached garage, which would require a Variance of 7.1 feet.

According to a cursory internet search, typical garages may be in the range of 20' X 20' to 24' X 24'. The smallest (open air) off-street parking space size required by the Zoning Code Section 11-10-4.A is 9' (width) X 20' (depth). If reduced to 20' in depth, the garage would still require a Variance of 3.1 feet. The smallest typical depth found by internet search was 17'. If reduced to 17', it would still require a Variance of 0.1 feet (1.2 inches). Required reduction to 17' or less could be considered an unnecessary hardship, as it would compromise the garage's utility and value.

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:  
“\*Please see attached [photos and explanations]\*”
- Peculiarity, Extraordinary, or Exceptional Conditions or Circumstances: “See attached photos. Numerous similar structures are obviously in violation. Apparently the extraordinary exception is that we are applying for a permit.”
- Finding of No Substantial Detriment or Impairment: “This addition will only help beautify the property, street & neighborhood, increase Bixby tax revenue & help set standards. The only detriment is if we are not granted Variance.”

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.

Of the several fundamental purposes for imposing front yard setback restrictions, the primary reasons are (1) so that future street and highway expansions will not require condemnation/removal of the structure, and (2) for the sake of consistency of design, mode of placement, and orientation of structures (aesthetics).

South 78<sup>th</sup> East Avenue currently has a 50-foot-wide right-of-way, which meets current Bixby development standards for right-of-way width for the functional design of a minor local residential street. The adopted Comprehensive Plan and TMAPC Major Street and Highway Plan do not designate it as a Major Street, and there are no other known plans to widen the right-of-way, nor does there appear to be current or projected need to do so. The first and principal reason for the front yard setback is thus not an issue in this case.

The Applicant has claimed that the house directly across the street had a garage added to the front of the house within the past couple years. Neighbor and Planning Commissioner Thomas Holland estimated the garage was added within the past year. A search of permit records found no permit records for the garage add-on – the last permit issued was an electrical permit on February 28, 2004. It would appear that the add-on was constructed without a building permit. Based on a scaling of aerial and parcel data, it appears the attached garage is approximately 18 feet from the right-of-way (16 feet per the Applicant's measurements).

The two corner lots at the intersection of 131<sup>st</sup> St. S. and 78<sup>th</sup> E. Ave., immediately to the south of the subject property, are also close to the 78<sup>th</sup> E. Ave. right-of-way. Based on a scaling of aerial and parcel data, the detached garage at the northwest corner of the intersection is approximately nine (9) feet from the 78<sup>th</sup> E. Ave. right-of-way (or four (4) feet per the Applicant's measurements), and the house at the northeast corner is approximately 20 feet (or 15 feet per the Applicant's measurements) from the right-of-way.

Therefore, visually/aesthetically, as one enters the Clyde Miller Acreage subdivision from 131<sup>st</sup> St. S. on 78<sup>th</sup> E. Ave., the existing mode of placement of structures would be relatively balanced, on east and west sides, if the Variance was approved and the garage was permitted to advance somewhat closer to the street than the 35' setback as currently required. For the sake of aesthetics, setbacks should be proportionally scaled back to meet the average setback of existing homes as one advances further to the north on 78<sup>th</sup> E. Ave.

An aerial map and a sketch of roughly representative structure locations are both attached to this report for further illustration.

Recognizing the setbacks of existing structures in the immediate area, and the visual/aesthetic conditions this presents, and for all the other reasons set forth above, 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.

The subject property may be determined to have Peculiar, Extraordinary, or Exceptional Conditions or Circumstances by virtue of the combination of the following facts:

- According to an inspection of the plat, the Clyde Miller Acreage subdivision was platted on December 23, 1953, presumably in unincorporated Tulsa County and subsequently annexed by Bixby.
- The plat of Clyde Miller Acreage only requires a 25' front-yard setback. Approval of the Variance would not conflict with the setbacks as established by the plat.
- Per County Assessor's records, the house on the subject property was constructed in 1950.
- The City of Bixby did not adopt a Zoning ordinance until circa the original 1974 Zoning Ordinance # 272.
- Had the garage been constructed at the time of the construction of the principal dwelling, it presumably would not have conflicted with any Zoning setbacks and so today would be legally nonconforming ('grandfathered').
- The dwelling immediately across 78<sup>th</sup> E. Ave. apparently encroaches on the 35' setback by recent garage add-on.

The Board should determine whether the requested Variance of 7.1 feet would be the minimum necessary to alleviate the unnecessary hardship. Consideration of the relative setbacks of adjoining structures and typical garage sizes may be helpful for inclusion in the determination.

Staff Recommendation. If the Board agrees with Staff that the above-set forth arguments are adequate for the justification of Variance in accordance with the tests and standards provided in State Statutes and the Bixby Zoning Code, and determines that the Variance to allow the setbacks as proposed would be the minimum necessary to alleviate the unnecessary hardship, Staff would recommend Approval.

NEW INFORMATION AS OF MAY 27, 2008:

This item was Continued from the May 05, 2008 regular meeting for the Applicant's failure to attend the meeting and represent the application. Staff's recommendation has not change

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

Applicant Richard Morrison of 3009 E. 101<sup>st</sup> St. S., Tulsa, described the setback Variance and the garage he was asking for. Mr. Morrison stated that the garage would be a 24 foot by 24 foot

garage attached to the front of the house, and would improve property value(s). Mr. Morrison stated that the garage would not encroach on the easement. Mr. Morrison added that this would align with the setbacks of the other houses in the block. Mr. Morrison clarified with Erik Enyart that the Variance would be for an approximately 7.1 foot encroachment on the zoning setback.

Chair Jeff Wilson asked Richard Morrison if anyone in the neighborhood objected. Mr. Morrison responded negatively and stated that he had become acquainted with the neighbors just by being there and working on the property. Erik Enyart noted that he had received phone calls but no one expressed objection when the nature of the Variance was explained to them.

Chair Jeff Wilson asked if there were any further questions or comments. There being none, Mr. Wilson asked to entertain a Motion. Dave Hill made a MOTION to APPROVE BBOA-473. Lonnie Jeffries SECONDED the Motion. Roll was called:

ROLL CALL:

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

NEW BUSINESS

3. **BBOA-476 – Michael & Diana Witte.** Discussion and possible action to approve a Special Exception per Zoning Code Sections 11-7D-2 Table 1 to allow a Use Unit 15 retail sales greenhouse facility in the CS Commercial Shopping Center District.  
Property Located: 13031 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: – 13031 S. Mingo Rd.  
– Part of the SW/4 SW/4 of Section 06, T17N, R14E

LOT SIZE: 1 acre, more or less

ZONING: CS Commercial Shopping Center District.

REQUEST: Special Exception per Zoning Code Sections 11-7D-2 Table 1 to allow a Use Unit 15 retail sales greenhouse facility in the CS Commercial Shopping Center District

SURROUNDING ZONING AND LAND USE:

North: AG; Agricultural and a house.

South: (Across 131<sup>st</sup> St. S.) CS, OL, FD, & AG; Agricultural in unincorporated Tulsa County. The AAA Landscaping and Four Seasons Lawn Care businesses are further to the south and zoned AG.

East: AG; Agricultural and a house.

West: (Across Mingo Rd.) AG, CS, OL, & RM-2; Agricultural. The Faith Temple Assembly church and agricultural land (with RS-3 zoning pending for “Willow Creek” residential subdivision) are to the southwest.

COMPREHENSIVE PLAN: Development Sensitive + Community Trail.

PREVIOUS/RELATED CASES:  
BZ-329 – Michael & Diana Witte – Request for rezoning from AG to CS – Recommended for Approval by PC 05/21/2007 and Approved by City Council 06/11/2007 (Ord. 970).

RELEVANT AREA CASE HISTORY:

BACKGROUND INFORMATION:

*The property is in the 100-year Floodplain, and so construction on site will require an Earth Change Permit and compensatory storage, along with all other requirements of the Floodplain Development Regulations provisions of City Code Title 13. Per the 2007 Revised Preliminary floodplain data, the property does not appear to be in the Floodway.*

*Per the City Engineer, stormwater detention will also be required. Fee-in-lieu will not be available until after the Haikey Creek floodplain project is completed, several years from now. Stormwater detention must be elevated above the 100-year Floodplain, and so additional areas for required detention must be compensated for (compensatory storage). The lessee is advised to begin working with a private engineer as soon as possible to coordinate compliance plans with the City of Bixby.*

ANALYSIS:

*General. The Applicant was approved for a rezoning to CS in 2007 and has offered the land for commercial lease. The Applicant has an agreement with a prospective lessee who would like to establish a vegetable and produce greenhouse with retail sales, which may be considered a Use Unit 15 retail sales greenhouse facility, permitted in the CS district by Special Exception.*

*Based on statements made by the prospective lessee, it is anticipated that the retail sales aspect of the land use would be minimal. The lessee has described plans to utilize the existing small building for retail sales and administration, and to construct, initially one, and later up to three (3) removable greenhouse buildings consisting of gravel flooring, bolt-together frames, and a plastic-cardboard type covering material.*

*Surrounding Zoning and Land Use Compatibility. Land to the north, east, and west (across 131<sup>st</sup> St. S.) is agricultural and is zoned AG. Land to the south across 131<sup>st</sup> St. S. is agricultural and is zoned CS, OL, and FD in unincorporated Tulsa County. Further to the south are agricultural uses and the AAA Landscaping and Four Seasons Lawn Care businesses zoned AG in unincorporated Tulsa County.*

*The Faith Temple Assembly church is to the southwest across Mingo/131<sup>st</sup> St. S., and the Broken Arrow Hitch & Trailer is located further to the west along 131<sup>st</sup> St. S.*

*The proposed use would be similar in terms of traffic generation and general impact as surrounding nonresidential uses listed above. Further, the proposed use is agriculturally-related, and a Use Unit 3 "Horticultural nursery" would be permitted by right in an AG district. Finally, the proposed use should be expected to have much less of an impact on surrounding land uses as other uses permitted by right in a CS district.*

*Staff Recommendation. Recognizing that the Zoning Code contemplates the Use Unit 15 retail sales greenhouse facility and provides for its approval in a CS district, and for all the other reasons outlined above, Staff believes that the proposed facilities 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 the case.

Prospective lessee David MacZura of "13031 S. Mingo Rd." [5103 S. Sheridan Rd. # 733, Tulsa, OK 74145] indicated that the proposed use would be a good use for the property until it was taken out of the [100-year] Floodplain. Mr. MacZura stated that the moisture and the fact that it would be out of the bright light would be good for growing. The Board asked what would be grown, and Mr. MacZura responded that he would grow tomatoes in about 1,500 square feet of greenhouse buildings. Mr. MacZura stated that this location operations would be experimental, and that it would not hurt the plants if the land flooded.

Chair Jeff Wilson asked if it would be a retail operation, and David MacZura responded affirmatively and stated that the tomatoes would be sold directly from the property, and that the [tomato] plants would be imported from Holland. Mr. MacZura stated that a few stores have

expressed interest in buying out all of his produce, which shows the need for it. Mr. MacZura stated that the high price of gasoline changes the whole industry, and that it now makes sense to produce in the local environment. Mr. MacZura stated that regular tomatoes would not compare in cost and quality to what he would produce. Mr. MacZura stated that school children could visit the site [on a field trip]. Mr. MacZura stated that the property presently only had a cinder block building, and that this use could be slid in in the meantime [until the area is taken out of the floodplain and the property is prepared for commercial development], which would help the Witte's and the City as a whole. Mr. MacZura stated that he had new technologies for growing that were not seen before. Mr. MacZura stated that Bixby was known for its agriculture.

Lonnie Jeffries asked if the tomatoes would be organic, and David MacZura responded affirmatively, and stated that there would be no sprays [of pesticide or herbicide] as it was a closed environment. Mr. MacZura stated that electronic wave pulses would be directed into the vines through water as a medium, computer-controlled remotely through the internet. Mr. MacZura stated that the industry was growing and needed new people. Mr. MacZura stated that he had conducted 14 to 15 years of research and has learned how to grow the tomatoes quick, faster, bigger, and better. Mr. MacZura stated that the news may come out to do stories.

David MacZura stated that he liked the property, that he found it in Bixby, and that it was within budget. Mr. MacZura stated that the property would produce over \$1 Million per year in retail sales if it were set up as planned.

Chair Jeff Wilson asked if anyone else wished to speak on the item. Applicant Mike Witte asked David MacZura about the hydroponic growing process and the physical elements of the greenhouses. Mr. MacZura answered the questions in detail and noted that the greenhouses would allow for 300% more production than what could be grown in a field. Mr. MacZura stated that the greenhouses would be constructed by: grade the land, put down plastic and cover with soil or rock or chat. Mr. MacZura described methods further, including saving the second "sucker" shoot and bending it downward to serve as a second contributing root, rather than cutting it off, and playing the radio for the plants. Mr. MacZura stated that the plants would grow 30 to 50 feet tall, as they were indeterminate plants which did not stop growing. Mr. MacZura stated that he would grown medium cocktail tomatoes.

Mike Witte continued to ask, and David MacZura continued to answer, questions about the growing methods, the use of rain water, and the internal irrigation system to be used. Dave Hill admonished Mr. Witte to ask questions relevant to the Zoning status of the property and refrain from continuing to ask questions about the tomato growing science, noting that the Board was not interested in this so much.

The Board clarified that Mr. Witte owned the land and Mr. MacZura had an agreement in place to lease it from him. Mr. Witte explained that he had not yet leased the property, pending the approval of this application.

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

Chair Jeff Wilson asked to entertain a Motion. Dave Hill made a MOTION to APPROVE BBOA-476. Lonnie Jeffries SECONDED the Motion. Roll was called:

ROLL CALL:

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

4. **BBOA-477 – Roy D. Johnsen.** Discussion and possible action to approve a Special Exception per Zoning Code Sections 11-7B-2 Table 1 to allow a Use Unit 5 subdivision swimming pool and pool house facility in the RS-3 Residential Single Family District with Planned Unit Development # 46.  
Property Located: 14230 S. Kingston 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: – 14230 S. Kingston Ave.  
– Reserve Area D in Block 1, Fiddler’s Creek Amended

LOT SIZE: 0.80 acres, more or less

ZONING: RS-3 Residential Single Family District and PUD 46

REQUEST: Special Exception per Zoning Code Section 11-7B-2 Table 1 to allow a Use Unit 5 subdivision swimming pool and pool house facility in the RS-3 Residential Single Family District with Planned Unit Development # 46.

SURROUNDING ZONING AND LAND USE: RS-3/PUD 46 & AG; Vacant single-family residential lots in Fiddler’s Creek Amended and rural residential to the northwest zoned AG.

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

PREVIOUS/RELATED CASES:  
BZ-312 – Roy Johnsen for Stone Creek Partners, LLC – Request for rezoning to RS-4 for subject property – Application abandoned in favor of PUD 46.  
PUD 46 – Roy Johnsen for Stone Creek Partners, LLC – Request for rezoning to RS-4 and PUD for subject property – Denied by City Council 12/12/2005 and reconsidered and Approved for RS-3 01/09/06 (Ord. 934).  
Preliminary Plat of Fiddler’s Creek – Request for Preliminary Plat approval for Fiddler’s Creek for subject property – Approved by PC 02/21/2006 and Approved by CC 02/27/2006.  
Final Plat of Fiddler’s Creek – Request for Final Plat approval for Fiddler’s Creek for subject property – Approved by PC 03/20/2006 and Approved by CC 04/10/2006.  
Final Plat of Fiddler’s Creek Amended – Request for Final Plat approval for Fiddler’s Creek Amended for subject property – Approved by PC 03/19/2007 and Approved by CC 03/26/2007.  
V-18 – Plat Vacation for Fiddler’s Creek – Request to vacate the old underlying plat of Fiddler’s Creek in favor of Fiddler’s Creek Amended – Approved by PC 05/21/2007 and Approved by CC 05/29/2007.

RELEVANT AREA CASE HISTORY:  
ANALYSIS:  
General. The developer of the Fiddler’s Creek Amended subdivision plans to construct a Use Unit 5 neighborhood pool and pool house facility. The community swimming pool and pool house have been planned to be a part of this subdivision from the beginning of the development review process. PUD 46, in the Development Concept section and on the Conceptual Site Plan, specifically stated that a community swimming pool and pool house would be planned for Reserve D. Also, on the face of the plat of Fiddler’s Creek Amended, the words “(Swimming Pool)” and “(Pool House)” are indicated on

Reserve D, and the Deed of Dedication and Restrictive Covenants clearly state that a swimming pool and pool house were intended. The PUD and Final Plat of Fiddler's Creek Amended were both approved by the Planning Commission and City Council. This establishes legislative intent to allow for these Use Unit 5 facilities.

It is only by mere technicality that the swimming pool and pool house cannot be constructed on Reserve D absent this Special Exception. PUD 46 provides:

"II. Development Standards - Single Family Residences

...

Permitted uses:

Detached single family residences and customary accessory uses"

In order that the PUD satisfy the Special Exception requirement of Zoning Code Section 11-7B-2 Table 1, the Development Standards must have stated that a Use Unit 5 community swimming pool and pool house facility was a permitted principal use on Reserve D.

Although PUD 56 does not presently provide for a Use Unit 5 principal use, Zoning Code Section 11-7I-4.A allows for Special Exception uses within a PUD. Therefore, this Special Exception is in order.

A community swimming pool and pool house facility cannot be considered a "customary accessory use" as it is not accessory to or incidental to a permitted primary use (a single family dwelling) on Reserve D. Accessory uses are provided for in Zoning Code Section 11-7B-3.A Table 2.

Similar Cases. The Board of Adjustment approved a Special Exception for a Use Unit 5 community pool and playground in the Reserve at Harvard Ponds in 2005 (BBOA-438), and approved a Use Unit 5 Splash Park serving the Southbridge subdivision in 2007 (BBOA-454).

Surrounding Zoning and Land Use Compatibility. The surrounding zoning is primarily RS-3 with PUD 46, with the exception of some AG containing rural residential to the northwest. The proposed community swimming pool and pool house would be consistent with the surrounding planned residential in the surrounding Fiddler's Creek Amended subdivision.

Community swimming pools and pool houses have historically and today are often found in large residential subdivisions.

Staff Recommendation. Recognizing that the Zoning Code contemplates the Use Unit 5 community pool and pool house facility and provides for its approval, and recognizing that the City Council established its intent to allow such a facility by its approval of the PUD and Final Plat, and for all the other reasons outlined above, Staff believes that the proposed facilities 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 the case.

Applicant Roy Johnsen of 201 W. 5<sup>th</sup> St., Suite 501, Tulsa, OK 74103 stated that the Board had been properly advised by its staff, and that the matter was a technicality. Mr. Johnsen stated that, if the pool wording was put on one page and not another, there would be no issue. Mr. Johnsen stated that he would endorse the staff's recommendation.

Chair Jeff Wilson asked if there were any further questions or comments. There being none, Chair Jeff Wilson made a MOTION to APPROVE the BBOA-477. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

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

ADJOURNMENT

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

ROLL CALL:

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

Meeting adjourned at 7:35 PM.

APPROVED BY:

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
City Planner/Recording Secretary