

SPECIAL/RESCHEDULED MEETING
MINUTES
BIXBY BOARD OF ADJUSTMENT
BIXBY CITY HALL, COUNCIL CHAMBERS
7:00 PM, September 02, 2008

STAFF PRESENT:
Erik Enyart, AICP, City Planner

ATTENDING:
See attached Sign-in Sheet

CALL TO ORDER

Meeting called to order by Chair Jeff Wilson at 7:05 PM.

ROLL CALL

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

MINUTES

1. Approval of Minutes for August 04, 2008

Chair Jeff Wilson introduced the item and stated that he would have to abstain as he was not present at that meeting. The Board noted that Darrell Mullins was Acting Chair for that meeting. Mr. Wilson asked to entertain a Motion. The Board members discussed the matter and Dave Hill recommended it be moved to the end of the agenda to allow additional time for review. Chair Jeff Wilson declared that the agenda items would be taken out of order and that this item would be moved to the end of the agenda.

OLD BUSINESS:

2. (Continued from August 04, 2008)
BBOA-484 – Norman T. Pruitt. Discussion and possible action to approve a Special Exception per Zoning Code Section 11-7D-2 Table 1 to allow a Use Unit 15 bottled gas/propane, grill, and outdoor oven sales and storage in the CS Commercial Shopping Center District.
Property located: 15630 S. Memorial Dr.

Chair Jeff Wilson introduced the item and asked Erik Enyart if he did not have an announcement on this item. Mr. Enyart read from an email from the Applicant's agent, REALTOR Steve Douglas, and stated that Mr. Douglas had reported that the buyers had backed out of the deal. Mr. Enyart stated that he understood the Applicant no longer wished to pursue the application, and had informed Mr. Douglas that he would recommend the case be Tabled, with the option to re-apply in the future if the need arose, which would require new public notice and fees, etc.

Chair Jeff Wilson and the other Board members clarified with Erik Enyart that the recommendation was to Table the item and not Continue it to another meeting. Mr. Enyart stated that a case could be disposed in three (3) ways: Approve it, Deny it, or Table it, and that a Continuation was simply an intermediate measure until it is ultimately disposed in one of the three (3) ways. Mr. Enyart stated that, in this case, he recommended it be Tabled, with the option to allow for re-application in the future, as otherwise an applicant would have to overcome the burden of explaining why the previous application was denied.

The Applicant was not present. No one spoke on the item.

Chair Jeff Wilson asked if there were any further questions or comments. There being none, Chair Jeff Wilson asked to entertain a Motion. Lonnie Jeffries made a MOTION to TABLE BBOA-484. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

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

NEW BUSINESS

- 3. **BBOA-488 – Paul & Kimilla Tryon.** Discussion and possible action to approve a Variance from the 25’ rear yard setback requirement per Zoning Code Sections 11-7B-3.B.1.b and 11-7B-4.A.1 Table 3 to allow an accessory building to be located approximately 10’ from the rear property line in the RS-[1] Residential Single Family District.
Property located: 8416 E. 125th St. S.; Lot 20, Block 4, *Southern Memorial Acres No. 2*

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

To: *Bixby Board of Adjustment*
From: *Erik Enyart, AICP, City Planner*
Date: *Wednesday, August 27, 2008*
RE: *Report and Recommendations for:
BBOA-488 – Paul & Kimilla Tryon*

LOCATION: – 8416 E. 125th St. S.
– Lot 20, Block 4, *Southern Memorial Acres No. 2*
LOT SIZE: 0.32 acres, more or less
ZONING: RS-[1] Residential Single Family District
EXISTING USE: One (1) single family dwelling
REQUEST: Variance from the 25’ rear yard setback requirement per Zoning Code Sections 11-7B-3.B.1.b and 11-7B-4.A.1 Table 3 to allow an accessory building to be located approximately 10’ from the rear property line in the RS-[1] Residential Single Family District.
SURROUNDING ZONING AND LAND USE: RS-[1]; Residential in *Southern Memorial Acres No. 2.*

COMPREHENSIVE PLAN: Low Intensity + Residential Area.

PREVIOUS/RELATED CASES: None found.

RELEVANT AREA CASE HISTORY:

ANALYSIS:

General. The subject property contains 0.32 acres, more or less, and a single family dwelling. It has 100' of frontage on E. 125th St. S., the rear line is parallel to the front line, and the lot is 134.5' deep on its west side and 140' deep on its east side. This causes the property to have a trapezoidal configuration, instead of a true rectangular shape. The average depth is 137.25'.

Tests and Standard for Granting Variance. Oklahoma State Statutes Title 11 Section 44.107 and Bixby Zoning Code Section 11-4-8.A and .C together provide the following generalized tests and standards for the granting of Variance:

- Unnecessary Hardship.
- Peculiarity, Extraordinary, or Exceptional Conditions or Circumstances.
- Finding of No Substantial Detriment or Impairment.
- Variance would be Minimum Necessary.

Nature of Variance. On July 30, 2008, Staff received a building permit application for the proposed accessory building and reviewed it for conformance to the Bixby Zoning Code. The building would be 30' from north to south (paralleling the depth of the lot) and 24' from east to west (720 square feet).

The building is proposed to be 10 feet from the rear (south) property line. The Zoning setback in the RS-1 district (in which the subject property is located) is 25'. Zoning Code Section 11-7B-3.B.1.b states:

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

Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. Staff could not conceive how the subject property should be deemed to have Peculiar, Extraordinary, or Exceptional Conditions or Circumstances, unique to the subject property, and not generally shared by other properties in RS-1 district. If the Board is amenable to this Variance, it should identify with the Applicant how the requested Variance would be in accordance with this test and standard provided in State Statutes and the Bixby Zoning Code. A small part of the subject property's inherent deficiency, giving rise to the hardship, would be its trapezoidal configuration, which renders slightly more real estate unusable for accessory [building] use than a conventional rectangular lot.

Unnecessary Hardship. The rear line of the dwelling, per GIS and aerial data, is approximately 85' north of the average of the angled rear property line. 25' of 85' is almost 30% of the rear yard area. The building would be 30' long from north to south. Added to the 25' rear yard setback, this leaves only 30' between the accessory building and the dwelling, and this location in the yard would unduly encumber a significant portion of the yard area.

As stated elsewhere in this report, one of the fundamental reasons for requiring yard setbacks is to improve the quality of life afforded by significant amounts of unbroken open space, in which to recreate privately. Thus, this quality of life reason for imposing setback requirements would be compromised by the very rule, due to the configuration of the subject property. Further, the accessory structure would be toward the west side of the lot, which combined with its trapezoidal configuration described above, would render even more real estate unusable for accessory [building] placement vis-à-vis a conventional rectangular lot.

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

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

1. For the sake of consistency of design, mode of placement, and orientation of structures (aesthetics).
2. Improvement of the quality of life as afforded by significant amounts of unbroken open space, in which to recreate privately.
3. Setbacks operate to reduce the risk of fires spreading from house to house.

4. *Setbacks are required to ensure structures, by their proximity, do not have the effect of 'crowding' or 'towering over' adjoining properties, and so maintain a reasonable distance from adjoining property lines for the benefit of neighborly relations.*

Based on GIS, aerial, and satellite data, it is evident that several houses in the immediately surrounding area have accessory buildings which do not meet the 25' rear yard setback standard. Rear yard setbacks of around, or even less than, five (5) feet have been observed. On May 04, 2007, the lot immediately to the south of the subject property on the south side of 126th St. S. was permitted an accessory building, to be located eight (8) feet from the rear property line – the building itself appears to have been erected in or around the first part of 2008. Although nonconformities are not appropriate grounds for supporting a request for Variance, the proposed setbacks would be relatively consistent with the accessory building locations on surrounding lots, inasmuch as they do not meet rear yard setbacks, at variable distances.

Due to its rear yard location, it is only viewable by a few adjoining properties, and so the aesthetic value of consistency of accessory building placement is not nearly as significant were the building located in more full view of the public, such as along a street.

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

Placement of the accessory structure 10' from the rear property line, and so further away from adjoining house structures, may actually operate to reduce the potential for the spread of fire from structure to structure, as compared to an allowable location 25' from the rear property line.

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

Staff would consider a 10' setback reasonable, recognizing the situation of accessory buildings on adjacent area lots and that a 5' setback is customarily considered reasonable for an accessory building.

For these reasons, Staff believes that the approval of the requested Variance would not cause substantial detriment to the public good or impair the purposes, spirit and intent of the Zoning Code or the Comprehensive Plan and should be considered the Minimum Necessary to Alleviate the Unnecessary Hardship.

Staff Recommendation. If the Board agrees with Staff that the arguments presented above, or others as presented in the application or those that the Applicant may provide during public hearing and consideration of this case at the meeting, substantially meet the Variance tests and standards provided in State Statutes and the Bixby Zoning Code for this Variance, Staff would recommend Approval. Staff notes that the exception to this recommendation is the Peculiar, Extraordinary, or Exceptional Conditions or Circumstances finding, as described above. Staff cannot conceive of viable arguments to satisfy this determination, but would not rule out the possibility that such could be discovered and found adequate during public hearing and consideration of this case at the meeting.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicants Paul and Kimilla Tryon were present. Mr. Tryon stated that he was requesting approval for an accessory building, a garage. Mr. Tryon stated that [the regulations] would require the building be moved too close to the house, and would make too much of the yard unusable. Mr. Tryon stated that he had checked the plat and the City's rules and made sure that the building would not be on the 7 ½ foot utility easement in the rear yard. Mr. Tryon stated that he had two (2) show cars he would store in the building. Mr. Tryon stated that he had talked to his neighbors, and that they were not opposed to the building. Mr. Tryon stated that some of his neighbors had approached him to see if they needed to attend the meeting [in support of his application], but that he said they did not have to. Mr. Tryon stated that the building would be professionally built, and that he would not build it himself.

Dave Hill clarified with Paul Tryon that the building in the rear yard was not the proposed building, but was in fact a smaller portable building moved on some time ago. Mr. Hill and Mr. Tryon discussed other accessory buildings in the neighborhood which did not meet rear yard setbacks. Mr. Tryon stated that some of the buildings were not even off the easements.

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-488. Lonnie Jeffries SECONDED the Motion. Roll was called:

ROLL CALL:

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

Dave Hill noted that, in this subdivision, control was lost a long time ago.

MINUTES (Resumed)

1. Approval of Minutes for August 04, 2008

Lonnie Jeffries made a MOTION to APPROVE the Minutes of August 04, 2008 as presented by Staff. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Mullins, Jefferies, & Hill
NAY: None.
ABSTAIN: Wilson.
MOTION CARRIED: 3:0:1

ADJOURNMENT

There being no further business to discuss, Chair Jeff Wilson declared the meeting adjourned at 7:24 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary