



City of Bixby Board of Adjustment Meeting Agenda

Tuesday, June 20, 2023

6:00 PM

**Municipal Building
116 W. Needles Ave., Bixby,
OK 74008**

Call to Order

Chairman

Roll Call

OC Walker, Secretary

Public Hearing

- 1) Discussion, consideration, and possible vote to approve the Board of Adjustment, May 22, 2023, Regular Meeting.
- 2) Discussion, consideration, and possible vote on an interpretation of the Zoning Code and the Downtown Design Overlay District standards do not prohibit freestanding, commercial buildings with a single use for Chick-fil-A, which is located at 14811 South Memorial Drive, Bixby, Oklahoma.

Old Business

New Business

Notice of Posting

This Notice and Agenda was posted on the bulletin board this day of June 9, 2023, on or before 6:00 p.m., at City Hall, 116 W. Needles Bixby Oklahoma.

Respectfully Submitted

O.C. Walker, City Planner

Persons who require a special accommodation to participate in this meeting should contact City Planner O.C. Walker: 116 West Needles Avenue, Bixby, Oklahoma, 918-366-

4430 or via Email: ocwalker@bixbyok.gov as far in advance as possible and preferably at least 48- hours before the date of the meeting. Persons using a TDD may contact OKLAHOMA RELAY at 1-800-722-0353 and voice calls should be made to 1-800-522-8506 to communicate via telephone with hearing telephone users and vice versa.



City of Bixby
P.O. Box 70
116 W. Needles Ave.
Bixby, OK 74008
(918) 366-4430

Staff Report

To: City of Bixby, Board of Adjustment

From: O.C. Walker, Development Services Director/City Planner
Gwen Plante, Assistant City Planner

Date: Monday, June 20, 2023

RE: BXBA 23.07 – Application for interpretation of the Zoning Code.

Location: 14811 S. Memorial Drive, Bixby, OK 74008
Platted: Scooter's at Market Square

STR: Section 13, Township 17, Range 13

Project: Chick Fil A – 148th and Memorial

Applicant: Lou Reynolds, Eller & Detrich, P.C.

Staff Review

The applicant has applied to request an interpretation of the Zoning Code and the Downtown Design Overlay District (Mixed Use B).

The applicant states the Downtown Design Overlay District is a Zoning District of Chapter 7 of the Bixby Zoning Code, (along with Agricultural, Residential, Office, Commercial, Science-Technology, Industrial, Corridor Appearance, Mixed-Use, and PUD Districts).

The Design Standards were adopted by Council as Ordinance No. 2302 as an amendment to the Zoning Code, not the Comprehensive Plan, and accordingly are a regulatory provision of the Zoning Code. Currently, the language of the Standards only permits specific building types and a single-use commercial building is not allowed.

Section 11-7H-4 of the Code states: “Upon the effective date of the Downtown Design Overlay Standards or any subsequent amendment, **any new building**, additions, or other structure or any

use of land **must be constructed or developed in accordance with all applicable provisions of the Downtown Design Overlay Standards.**”

City Staff:

The Downtown Design Overlay Standards are intended to guide Bixby’s prosperous and sustainable future by:

1. Providing clear regulations and processes that result in a predictable, efficient, and coordinated review process.
2. Promoting sustainable building and site design practices.
3. Promoting diverse housing options.
4. Provide standards for interconnected streets and development patterns that support all modes of travel (walking, bicycling, public transit, driving).

The location 14811 S. Memorial Drive, Bixby, OK 74008, is in District 2 of the Downtown Design Overlay Standards. District 2 is on the Northwestern edge of Downtown, much of this district is zoned for general commercial use and has strip centers, fast food establishments, grocery, big box retail, and gas and convenience stores. Businesses are encouraged to include amenity space for outdoor dining, patios, or attractive landscaping.

Staff consulted with the City Manager and City Attorney, both advised that the Downtown Design Overlay Standards as well as the Comprehensive Plan are guidance documents and do not restrict Council approval of any project that they deem to be in the City’s best interest. The design standards are considered and enacted not to regulate use but to establish appearance standards for new development as well as existing building modifications.



Figure 1: City of Bixby Zoning Map

Existing Zoning; Use:

(CG) Commercial General

Abutting Zoning; Uses:

(CS) Commercial Shopping – North, South

(IL) Industrial Light – East, West

Public Comments: No comments were received at the time of writing this Staff Report.

Staff Comments: Staff recommends approval on the basis that the Downtown Design Overlay Standards are a guide and do not prohibit free-standing commercial buildings with a single use.

Sample Motion:

In BOA Case BXBA-23.07 Variance, I move that we (approve/deny) with a conclusion that the design standards are considered and enacted not to regulate use but to establish appearance standards for new development and existing building modifications.

Dear Phil,

We are in agreement that the restaurant use is permitted by right in this district. We are also in agreement that the appearance standards are incorporated and adopted as part of the zoning code and regulate modifications of existing buildings and all new buildings in the district. Thus, as a new building in the appearance district, the Chick-fil-A restaurant must comply with the appearance standards of the zoning code.

It appears to us that the building itself (again, not the use of the building) does not, and cannot, comply with the appearance standards because the standards only permit "flats" and "mixed-use B" buildings in District 2. The Chick-fil-A building is neither.

I think we can all agree that the intent of the appearance standards was not to prohibit stand-alone commercial buildings. However, as written, the standards seem to do just that. The Board of Adjustment has the power to interpret the zoning code and determine that the appearance standards do not prohibit stand-alone commercial buildings.

Please place the request for interpretation on the next Board of Adjustment agenda so that this ambiguity can be resolved.

Sincerely,

Nathalie M. Cornett
Attorney at Law

2727 E. 21st Street, Ste 200
Tulsa, Oklahoma 74114-3533
(918) 747-8900 phone
(866) 547-8900 toll free
(918) 392-9427 e-fax
NCornett@EllerDetrich.com

www.EllerDetrich.com

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wish to discontinue this method of communication, please so advise, and no further e-mail communication will be sent.

From: Phil Frazier <pfrazlaw@swbell.net>
Sent: Thursday, April 13, 2023 2:09 PM
To: Nathalie M Cornett <NCornett@ellerdetrich.com>
Cc: OC Walker <ocwalker@bixbyok.gov>; Gwen Plante <gplante@bixbyok.gov>; R. Louis Reynolds <LReynolds@ellerdetrich.com>; Jared Cottle <jcottle@bixbyok.gov>; Brian Guthrie <bguthrie@bixbyok.gov>
Subject: Re: Chick-fil-A

Nathalie--I have reviewed Chapter 7 of the Bixby Zoning Code with special attention given to 11-7H-4. (Ordinance 2302)

As you note, these are design standards. They were considered and enacted not to regulate use but to establish appearance standards for new development as well as existing building modification. This is sometimes referred to as "Appearance District Regulation. Our zoning code, Chapter 9 allows your intended use as a matter right. See also 11-13-6-Use unit 12.

Phil Frazier
Frazier & Phillips
Attorneys at Law
1424 Terrace Drive

O.C.

Thanks for getting back to me. I have to respectfully disagree with Mr. Frazier's and Mr. Cottle's statements. The Downtown Design Overlay District is a Zoning District of Chapter 7 of the Bixby Zoning Code, (along with Agricultural, Residential, Office, Commercial, Science-Technology, Industrial, Corridor Appearance, Mixed-Use and PUD Districts).

While I do agree, and it is well-established by Oklahoma courts, that a comprehensive plan is a guiding document that is not regulatory, the same cannot be said of the provisions of a zoning ordinance. The Design Standards were adopted by Council as Ordinance No. 2302 as an amendment to the Zoning Code, not the Comprehensive Plan, and accordingly are a regulatory provision of the Zoning Code.

Section 11-7H-4 of the Code states: "Upon the effective date of the Downtown Design Overlay Standards or any subsequent amendment, any new building, additions, or other structure or any use of land must be constructed or developed in accordance with all applicable provisions of the Downtown Design Overlay Standards." Currently, the language of the Standards only permit 9 specific building types – none of which are a single-use commercial building.

We respectfully request that our application for interpretation of the zoning code by the Board of Adjustment be processed.

Please let me know if a meeting with Mr. Frazier and Mr. Cottle would be beneficial and I'll be happy to get something on the calendar. Thanks again for your time today,

Sincerely,

Nathalie M. Cornett
Attorney at Law

2727 E. 21st Street, Ste 200
Tulsa, Oklahoma 74114-3533