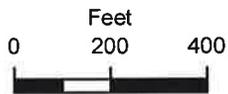


**LEGEND**

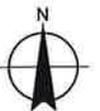
 Bixby Corporate Limits



**CBOA-2823**

17-14 19

4.1



**TULSA COUNTY BOARD OF ADJUSTMENT  
CASE REPORT**

**TRS:** 7419

**CZM:** 68

**CASE NUMBER: CBOA-2823**

**CASE REPORT PREPARED BY:** Robi Jones

**HEARING DATE:** 07/21/2020 1:30 PM

**APPLICANT:** Ken Binkley

**ACTION REQUESTED:** Special Exception to permit fireworks stand (Use Unit 2) in an AG district and a Variance from the all-weather parking surface requirement (Section 1340.D).

**LOCATION:** 9805 E 161 ST S

**ZONED:** AG

**FENCELINE:** Bixby

**PRESENT USE:** Residential

**TRACT SIZE:** 2.2 acres

**LEGAL DESCRIPTION:** E479.2 W849.7 LYING S OF MVRR LESS BEG 370.50E & 353.81N SWC SW TH N APR 128.67 SE APR 168.76 SW APR 119.19 POB & LESS S24.75 THEREOF FOR ST SEC 19 17 14 2.204ACS,

**RELEVANT PREVIOUS ACTIONS:**

**Subject Property:**

**CBOA-2535 May 2015:** The Board approved the request for a Special Exception to allow a fireworks stand (Use Unit 2) in an AG District (Section 310); Variance of the all-weather surface requirement for parking (Section 1340.D) finding this will not be injurious to the surrounding neighborhood. The hours of operation will be 11:00 A.M. to 10:00 P.M. June 15th through July 5th with the hours of operation for July 3rd and July 4th being 11 :00 AM. to 12:00 midnight, or consistent with the State permitted operating window. This approval has a five-year time limit until June 2020, on property located at 9805 E 161 ST S.

**Surrounding Property:** None Relevant

**ANALYSIS OF SURROUNDING AREA:** The subject tract is located in a rural area that contains large lot residential on the east and west; light industrial and a church to the north.

**STAFF COMMENTS:**

The applicant is before the Board requesting a **Special Exception** to permit fireworks stand (Use Unit 2) in an AG district and a **Variance** from the all-weather parking surface requirement (Section 1340.D). The applicant had been approved previously for the exact request (CBOA-2535) with a time limitation of 5 years. The time limit expired June 30, 2020. Therefore, the applicant is before the Board again with the same request.

The applicant provided the following statement: *"Would like to utilize the property for fireworks sales from June 15 - July 5. The property is part of a grass yard and gravel or pavement would not be utilized for the remainder of the year. Also, gravel would also be hazardous."*

4.2

A Special Exception is required as the proposed fireworks stands are a use which is not permitted by right in the AG district because of potential adverse affect, but which if controlled in the particular instance as to its relationship to the area and to the general welfare, may be permitted. The fireworks stands must be found to be compatible with the surrounding area.

The Site Plan submitted with the application proposes four fireworks stands and a cashier's booth on the eastern portion of the property. The subject property currently contains one occupied single family home. The subject site is in a sparsely developed rural area; residences abut the subject lot on the east and west.

The applicant proposes an unpaved grass parking area. The Code requires all parking areas be paved with an all-weather material to maintain a minimum level of aesthetics, but more importantly to control air-borne particulates like dust and to control the tracking of dirt and mud onto public streets.

Fireworks stands previously approved by the Board within the County are normally a temporary use operating for less than a few weeks in a given year. The applicant has stated that the fireworks stands will be in operation from *June 15 - July 5*.

If inclined to approve, the Board may consider any conditions it deems necessary and reasonably related to the request to ensure that the fireworks stand is compatible with the surrounding area. The Board may consider establishing conditions related to hours of operation.

**Sample Motion:**

**"Move to \_\_\_\_\_ (approve/deny) a Special Exception to permit fireworks stand (Use Unit 2) in an AG district and a Variance from the all-weather parking surface requirement (Section 1340.D).**

**Per the Conceptual Plan(s) shown on page(s) \_\_\_\_\_ of the agenda packet.**

**Subject to the following conditions, if any: \_\_\_\_\_.**

**Finding the hardship to be \_\_\_\_\_.**

***In granting a Variance, the Board must find that 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 the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan.***

***Finding the Special Exception will be in harmony with the spirit and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.***

Variance from the minimum lot width requirement from 150 feet to 118.6 feet in an AG District to permit a lot split (Section 330, Table 3). LOCATION: 7613 East 181<sup>st</sup> Street South, Bixby

**Presentation:**

**Lance Price**, 3223 East 146<sup>th</sup> Place, Bixby, OK; stated he owns 8.5 acres that he would like to separate. There is an existing house on one acre of the acreage and he would like to separate it from the remaining acreage.

Mr. Charney asked Mr. Price if he planned to split the other acreage into individual lots for more homes, if the Board were to approve this request. Mr. Price stated that he has no intentions of splitting the acreage apart because he is a believer in putting land back together rather than separating it.

**Interested Parties:**

**Linda Greene**, 21884 West 131<sup>st</sup> Street South, Sand Springs, OK; stated that she spoke with Mr. Price in the hallway today, and she now understands what Mr. Price is attempting to do with the subject property. Ms. Greene stated she is withdrawing her verbal request for the continuance.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **DILLARD**, the Board voted 5-0-0 (Charney, Crall, Dillard, Hutchinson, Walker "aye"; no "nays"; no "abstentions"; none "absent") to **APPROVE** the request for a Variance from the minimum land area per dwelling unit requirement from 2.1 acres to 1 acre; Variance from the minimum lot area requirement from 2 acres to 1 acre; Variance from the minimum lot width requirement from 150 feet to 118.6 feet in an AG District to permit a lot split (Section 330, Table 3). This approval is not to presumed that it allows additional lot splits even though there is eight acres. The hardship is the peculiarity of the long narrow nature of the lot; for the following property:

**E/2 E/2 SW SE LESS E130 S385 THEREOF SEC 35 17 13 8.85AC, OF TULSA COUNTY, STATE OF OKLAHOMA**

**2535—Ken Binkley**

**FILE COPY**

**Action Requested:**

Special Exception to allow a fireworks stand (Use Unit 2) in an AG District (Section 310); Variance of the all-weather surface requirement for parking (Section 1340.D). LOCATION: 9805 East 161<sup>st</sup> Street South, Bixby

CBDA - 2535

FILE COPY

**Presentation:**

**Ken Binkley**, 9805 East 161<sup>st</sup> Street South, Bixby, OK; stated the fireworks stand has been operating for 23 years and this will be the 24<sup>th</sup> year. The stand has been located on the subject property for 12 years. Mr. West informed him last year that he needed to come before the Board of Adjustment to receive approval which would make the stand legal, and that is why he is here today.

Mr. Charney asked Mr. Binkley if the stand was located on his homestead property. Mr. Binkley answered affirmatively.

Mr. Charney asked if there was an area for people to pull off 161<sup>st</sup> Street. Mr. Binkley stated there is ample parking and across the road he has permission from the sod farm to use their property for parking also if needed.

Mr. Binkley stated there has never been a traffic issue in the past and he has a lot of repeat customers.

Mr. Charney asked Mr. Binkley what his operating hours would be. Mr. Binkley stated that the hours would be 11:00 A.M. until 10:00 P.M., and on the 4<sup>th</sup> be open until midnight.

Mr. Hutchinson asked Mr. Binkley when he opened the stand and when he would close the stand for the season. Mr. Binkley stated that he will open it June 15<sup>th</sup> and be open until July 6<sup>th</sup>.

Mr. Crall asked Mr. Binkley if there was any area that he could lay gravel for the parking. Mr. Binkley stated the stand is in his yard so laying gravel on the property would mean he would be throwing rocks everytime he mows the grass.

Mr. Dillard asked Mr. Binkley if he had mud and rutting problems in the past. Mr. Binkley stated that he has had a couple of rainy seasons where there was a mud issue.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **HUTCHINSON**, the Board voted 5-0-0 (Charney, Crall, Dillard, Hutchinson, Walker "aye"; no "nays"; no "abstentions"; none "absent") to **APPROVE** the request for a Special Exception to allow a fireworks stand (Use Unit 2) in an AG District (Section 310); Variance of the all-weather surface requirement for parking (Section 1340.D) finding this will not be injurious to the surrounding neighborhood. The hours of operation will be 11:00 A. M. to 10:00 P.M. June 15<sup>th</sup> through July 6<sup>th</sup> with the hours of operation for July 3<sup>rd</sup> and July 4<sup>th</sup> being 11:00 A.M. to 12:00 midnight, or consistent with

CBA-2535

the State permitted operating window. This approval has a five year time limit until June 2020; for the following property:

E479.2 W849.7 LYING S OF MVRR LESS BEG 370.50E & 353.81N SWC SW TH N APR 128.67 SE APR 168.76 SW APR 119.19 POB & LESS S24.75 THEREOF FOR ST SEC 19 17 14 2.204ACS, OF TULSA COUNTY, STATE OF OKLAHOMA

\*\*\*\*\*

NEW APPLICATIONS

2536—Joseph Watt

Action Requested:

Special Exception to allow a mini-storage (Use Unit 16) in a CS District (Section 710). LOCATION: NE/c of East 86<sup>th</sup> Street North and North Yale Avenue, Owasso

Presentation:

**Joseph Watt**, 9936 East 55<sup>th</sup> Place, Tulsa, OK; stated the beginnings of this property was when the nine acres was separated out years ago. There was a perimeter of 90 feet on the north and 120 feet on the east zoned RE and the rest of the land was zoned agriculture. Mr. Watt stated that he has not been able to find the records for the separation so he does not know how it came about. The CS zoning is more restrictive for commercial development but yet part of this is to allow storage units and a commercial building. Prior to today he had to do all the storm water details and determinations so the proposed usage would not be displacing water on anyone else. Matter of fact, he will be taking water away from portions of the property that is now draining to the northeast and it will be pulled back to the south and the west holding it in the detention facility for the subject property, and it is proposed to regrade the site so there will be no water whatsoever displaced onto the neighbors to the north or to the east.

Interested Parties:

**Calvin Swindle**, 5206 South Harvard, Unit 319, Tulsa, OK; stated he has concerns about the drainage.

Mr. Charney stated that in order to have a building constructed on the subject site there will be platting and an engineering effort made to control the stormwater in a manner that is consistent with all the stormwater regulations. The Board of Adjustment does not focus upon that, but focus on the land use is appropriate. The stormwater drainage, the stormwater retainage and the stormwater detention and the release will all be addressed at the platting stage and it will be reviewed very carefully, then it will be stamped by an Engineer that the applicant is not releasing stormwater at a faster rate in the post development stage than is being release currently.



*Looking northwest from E. 161st St. S. – image from Google Earth 2012*



*Looking northeast from E. 161st St. S. – image from Google Earth 2012*



S MINGO RD

E 161st ST S

S 97 E PL

S 98 E AVE

E 164 ST S

**CBOA-2823**

Note: Graphic overlays may not precisely align with physical features on the ground.

Aerial Photo Date: February 2018

4.8



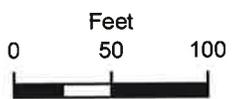
Subject Tract

17-14 19





**E 161st ST S**



*Subject Tract*

**CBOA-2823**

17-14 19

*Note: Graphic overlays may not precisely align with physical features on the ground.*

*Aerial Photo Date: February 2018*



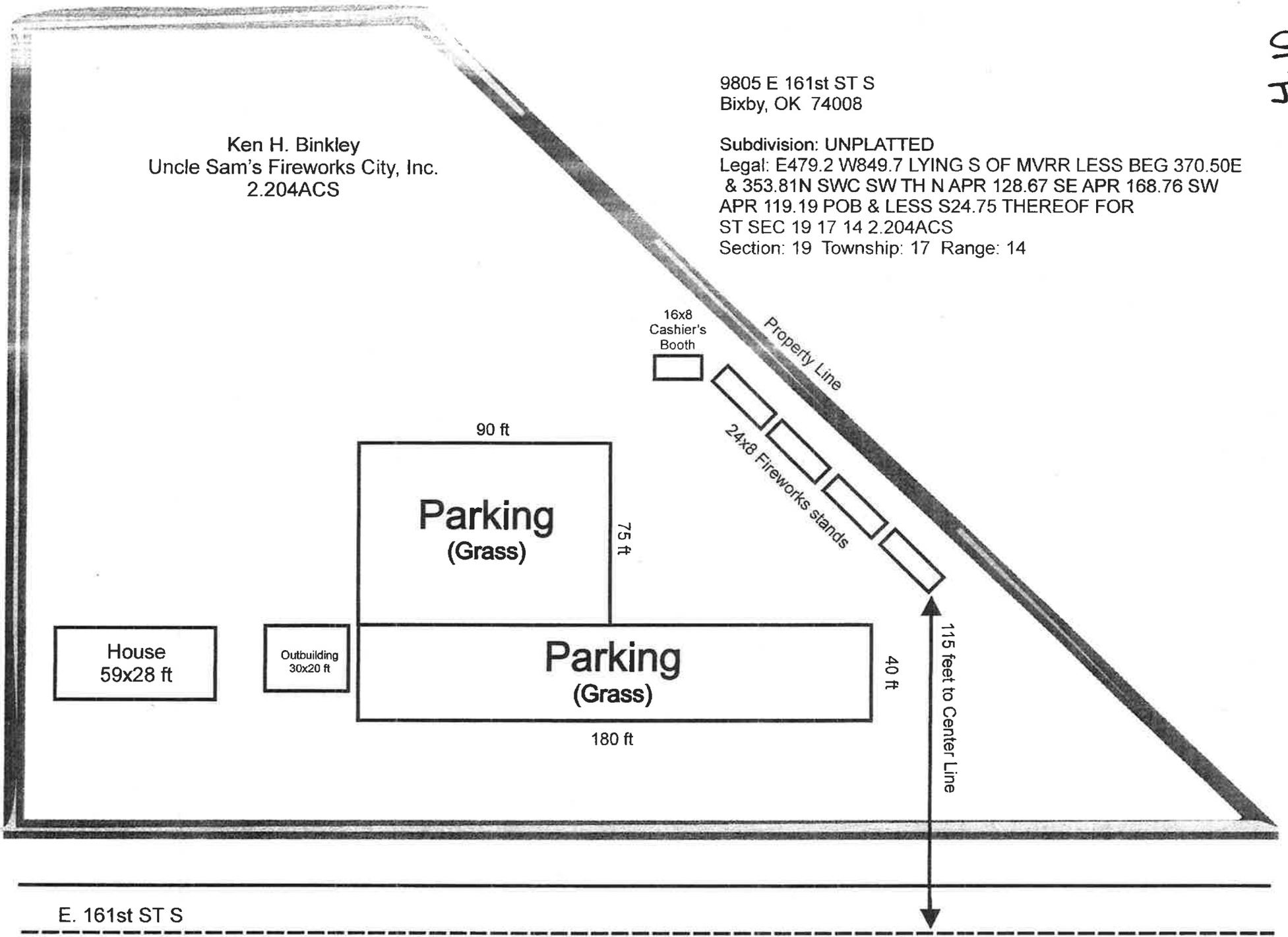
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Ken H. Binkley  
Uncle Sam's Fireworks City, Inc.  
2.204ACS

9805 E 161st ST S  
Bixby, OK 74008

Subdivision: UNPLATTED  
Legal: E479.2 W849.7 LYING S OF MVRR LESS BEG 370.50E  
& 353.81N SWC SW TH N APR 128.67 SE APR 168.76 SW  
APR 119.19 POB & LESS S24.75 THEREOF FOR  
ST SEC 19 17 14 2.204ACS  
Section: 19 Township: 17 Range: 14



E. 161st ST S