



MINUTES

BOARD OF ADJUSTMENT MEETING

**CITY OF BISBEE COUNCIL CHAMBERS LOCATED AT
915 S. TOVREAVILLE ROAD, BISBEE, AZ 85603
THURSDAY, SEPTEMBER 7, 2023, 5:30PM**

CALL TO ORDER: 5:41PM

ROLL CALL- BOARD MEMBERS / STAFF

	PRESENT	ABSENT	EXCUSED
Tyler Bradberry	X		
Cado Daily	X		
Melissa Hartman, Chair	X		
William (Bill) Higgins	X		
Fred Miller	----	----	X
Tom Patterson	----	----	X
VACANT	----	----	----
Ken Budge, Council Liaison	X		
VACANT, Staff Liaison	X		
Joe Ward, Bldg. Inspector	X		
Xavier Rodriguez, Deputy Bldg. Inspector	X		
Nina Williams, Deputy City Clerk	X		
Joe Estes, City Attorney	X		

Agenda Item 1.

BOA 23-02

Applicant: Representative Doug Nystrom DMG Contractors LLC

Location: 320 Arizona Street Bisbee, AZ 85603

Requesting a Variance: Variance for Lot split, dividing an existing 7,000 sq ft. lot under the minimum lot area established by the City Zoning Code.

A. Opening of the Public Hearing

Ms. Hartman opened the Public Hearing.

B. Presentation by the Applicant

Mr. Nystrom spoke regarding this variance request.

Mr. Nystrom stated the request was for a lot split for lesser square footage into two (2) parcels. The Owner has decided to call Bisbee his home and wanting to split the lot into a residential parcel and a commercial parcel.

- **If the owner were to sell the building off, it was not likely a person looking for a house would want to buy a commercial building and vice versa.**
- **AZ Water company doesn't like doing two (2) water services on 1 property and if it was all on one (1) parcel there would be a penalty rate because it would be a temporary service.**

C. Comments by persons in favor (Speaking time limit three (3) minutes per person.

There were no comments in favor.

D. Comments by persons opposed (Speaking time limit three (3) minutes per person.

There were no comments in opposition.

E. Summarization by City Staff

Mr. Ward stated that the only question that remained was if this was self-imposed.

Mr. Estes spoke regarding the legal requirements for a variance which required that the board find special circumstances apply to this specific property. Non-conforming uses in the neighborhood or surrounding properties was not a basis for a determination. The stated goal was not to create additional non-conforming uses, but try to bring everything into conformance when possible. The special circumstances applicable to the property include size, shape, topography, and location. Strict application of the zoning code depriving the property of privilege's enjoyed by other properties of the same classification and same zoning district. The special circumstances, if found cannot be self-imposed by the property owner. He explained they have to be existing just inherently based off of the property not off of the property owners desired use or current construction plans etc. The question he had was if this was a concern why the property owner didn't seek to split the property prior to starting construction on the residential structure instead of going about this kind of the backwards way of starting a residential structure and then seeking a variance and asserting that the variance was necessary now because there was a residential structure that was being constructed on the property.

F. Rebuttal by the Applicant

Ms. Estes said if the applicant has any additional information with regard to the special circumstances that are being alleged and how those were applicable to this property and how they are not self-imposed would be very helpful to the board.

Mr. Nystrom stated the owner lived out of town and was intending to move here and make this his house for the remainder of his life and retirement. It didn't start out as that plan when he purchased the property. He was looking for a commercial site to land his business from Phoenix. This has been a progression of things the owner had to make decisions about such as where he would eventually live and how he would run his business. The owner wants to be able to pass on that building to his only heir and at some point in time it would be very difficult if they were trying to use that building for market or sell it and a house has to go along with it and vice versa if the owner had to move away.

Mr. Estes asked if there was any discussion when he came to Mr. Nystrom for the construction as to why he didn't seek to divide the property first before starting construction on the house.

Mr. Nystrom said he did not know the reason why and spoke about the original concept of what he wanted built, which would have been inside of the building. The owner was not sure the destiny of the land or how it would even get used if ever.

Mr. Estes asked if the Board had any additional questions.

Mr. Hartman said not yet she was going to close the public hearing and move forward to discussion.

G. Closure of the Public Hearing

Ms. Hartman closed the Public Hearing.

H. Discussion of the Variance Application among the Board Members

Ms. Daily said she unfortunately thought the water company increasing the cost providing the two (2) services to the property would not qualify under not self-imposed. Her understanding was that on a commercial property it was allowed to have a residential building built so nothing has been done illegally at this point. Whether that building was going up right now really was neither here nor there.

Mayor Budge said that he wouldn't be so worried about selling the whole property there could be several things that could be done about that.

Ms. Hartman asked Mr. Ward if we would allow 3200 square feet to build a home or 3700 square feet for commercial.

Mr. Ward stated it was not currently permitted.

Ms. Hartman stated if they allowed this variance they would be violating the zoning code.

Mr. Ward said that it would violate the Zoning code.

Ms. Daily spoke regarding the lots in that area that are less than 6,000 square feet residential as well as commercial. She thought that what made this a tricky decision.

Mr. Bradberry said that was exactly what the attorney was saying. We can't let that set precedent on the decision.

Ms. Daily asked about setbacks with the lot splitting would this be satisfied for the footprint of the building.

Mr. Ward said that setbacks in the area, was set by neighborhood standards and would meet the neighborhood standards.

Mr. Estes stated that the City had just adopted new minimum lot coverage amounts that would be applicable would have to be taken into consideration.

Mayor Budge said how much coverage was allowed versus land and that deals with runoff. He asked Mr. Estes if the adopted minimum lot coverage would apply to this application.

Mr. Estes said even if an application submitted and was not processed or finalized until a decisions was rendered so the standard would be applicable. He said that not even bringing into the consideration the minimum lot coverage requirement you get down to the question here was that the minimum lot size for a residential lot was 6,000 square feet. Mr. Nystrom was asking for a variance to reduce that by at least over half on one and just above half on the other. The Board does not have to consider the fact that there was a residential structure under construction that was pretty much a non-issue because it was permitted and was allowed under the current zoning use. The question was does the variance which was seeking a reduction in lot size meet the special circumstances that are provided for in city code which was copied straight from the state statute. You would have to one (1) find special circumstances and determine and make a finding as to what those special circumstances are and two (2) you have to make a finding that those special circumstances are not self-imposed.

Mr. Bradberry gave an alternative solution to this issue by acquiring the property next door and split it the other way.

Ms. Daily said Mr. Estes comments were very persuasive the fact that they could not take into consideration precedence. This was not in the developer's favor. The special circumstances were self-imposed and there was nothing external that was causing this request. There was not a lot of reason to grant the variance.

Mr. Bradberry asked questions regarding the water service.

Mr. Nystrom answered and stated if this was not approved they would just work off the existing water service.

Mr. Estes gave a statement to the applicant, if this doesn't get approved based off of some of the comments and circumstances there was a potential option based off of the lot coverage that the applicant has on these properties. Instead of doing a residential zone have it rezoned to a C-2 because under the zoning code C-2 does not have a minimum lot area square footage, it just has a minimum width and depth requirement of 30 ft. by 70 ft. If the requirements could be met for a C-2 with the width and depth requirements and the lot coverage they might be able to come back with an application for a lot split to split it into two (2) C-2 parcels. A C-2 parcel allows for any permitted use under C-1 and C-1 allows any residential. It would still allow for a residential, but that might be able to be a way to resolve the size square footage issue and the issue and concern with the variance requirements. At that point a C-2 as long as you meet the width and depth requirements and the minimum coverage requirements you wouldn't require a variance and it wouldn't have to go to the Board of Adjustments.

I. Call for Motion and Decision by the Board

MOTION: Ms. Daily moved to deny the request for variance at 320 Arizona Street.

SECOND: Mr. Higgins

ROLL CALL VOTE:

AYES: Bradberry, Daily, Hartman, and Higgins

NAYES: 0

MOTION PASSED: UNANIMOUSLY

ADJOURNMENT: 6:19PM

MOTION: Mr. Higgins moved to adjourn the meeting.

SECOND: Mr. Bradberry

MOTION PASSED: UNANIMOUSLY