

****PLEASE NOTE THAT DURING THIS MEETING AT TIMES THE AUDIO DROPPED AND WAS INAUDIBLE****



BOARD OF ADJUSTMENT MEETING

**CITY OF BISBEE COUNCIL CHAMBERS LOCATED AT
915 S. TOVREAVILLE ROAD, BISBEE, AZ 85603
THURSDAY, NOVEMBER 2, 2023, 5:30PM**

CALLED TO ORDER: 5:30pm

ROLL CALL- BOARD MEMBERS / STAFF: MELISSA HARTMAN

	PRESENT	ABSENT	EXCUSED
Tyler Bradberry	----	----	X
Cado Daily	X		
Melissa Hartman, Chair	X		
William (Bill) Higgins	----	----	X
Fred Miller	X		
Tom Patterson	----	X	----
Sharon Stetter	X		
Ken Budge, Council Liaison	X		
Emanuel Stuart, Staff Liaison	X		
Joe Ward, Bldg. Inspector / Code Enforce.	X		

Agenda Item 1.

BOA 23-04

Applicant: Jeffery Beaudoin

Location: 105 C Street, Bisbee, AZ 85603

Requesting a Variance: Variance to place a Tiny Home/ Recreation Vehicle on their R-1 Zoned property.

A. Opening of the Public Hearing

M. HARTMAN OPENED PUBLIC HEARING

B. Presentation by the Applicant

Mr. Beaudoin gave his intention and read his notes regarding his project. He stated that he relocated to Bisbee from Nebraska and chose a tiny home as it was affordable, generates very low monthly bills due to its size, and found that Arizona was a top three (3) State in the country for the construction of Tiny Homes. He also noted that the lot itself was listed for sale as “A great spot for a Tiny Home”.

During the purchase process he spoke with his realtor as well as the seller’s realtor and multiple contractors regarding his intention to place a tiny home on the lot but was never informed that there was a potential zoning restriction. Further it was not until he had completed the purchase of the lot and had his tiny home delivered that he was approached by Joe Ward the Building Inspector and told that there was a zoning issue. Mr. Beaudoin then stated that during their discussion Mr. Ward recalled seeing the advertisement on the sale listing and stated he understood why Mr. Beaudoin would be under the impression that the placing of a tiny home would be allowed.

Mr. Beaudoin said his tiny home is made of timber and was structurally sound. He had spent thirty-three thousand dollars (\$33,000) to have the utilities correctly brought up to code. The tiny home itself was purchased for one hundred and thirty-three thousand dollars (\$133,000.00) bringing the total investment to one hundred and sixty-six thousand dollars (\$166,000.00).

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Mr. Beaudoin spoke with local contractors who stated the homes in the Saginaw area were relocated in the past and the area had occupied mobile homes thus making his home a suitable addition to the neighborhood.

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

M. HARTMAN OPENED THE FLOOR FOR THOSE IN FAVOR OF THE PROJECT.

1. Mr. Brian Ulmer at 101 B Street felt that the applicant made some solid arguments and that it was of his opinion that the tiny home would be a suitable addition to the neighborhood and hoped to possibly build his own in the future.
2. Mr. Johnny Blanco at 107 C Street did not have an issue with the tiny home and felt that the applicant himself would make a great neighbor.

Mr. Ulmer requested to speak again, he stated there was an additional lot that had also been left vacant after a fire in Saginaw and currently has an unsightly mobile home on it. He had personally volunteered to remove the mobile home but was advised not to for legal reasons.

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

M. HARTMAN OPENED THE FLOOR TO THOSE OPPOSED TO THE PROJECT.

Ms. Nina Williams, Deputy City Clerk stated they had received one (1) call in opposition to this project and they questioned why the tiny home had been placed; as well as the utilities been established prior to the meeting.

E. Summarization by City Staff

M. HARTMAN OPENED TO CITY STAFF COMMENTS.

Mr. Stuart, City Planner stated he felt that the lot would be reasonable for a manufactured home but that the tiny home description being proposed fit more with a recreational vehicle versus a manufactured unit and there would be better suited for a mobile home park than a residential zone.

Mr. Ward, Building Inspector/Code Enforcement Officer stated the zoning only permitted a site-built home and not this type of home.

F. Rebuttal by the Applicant

M. HARTMAN OPENED FOR REBUTTAL.

Mr. Beaudoin said he would never have invested money in this property or moved across the country had he been aware that he would end up in front of the Board. He stated his biggest argument on his behalf was that possibly the code regarding the specific type of homes was written before tiny homes like his were popularized by the rise of housing costs. It was his intention to minimize his cost-of-living expenses while maximizing his income, which had not been increased. He asked that the Board keep an open mind as his tiny home was of good quality and well built.

Mayor Budge stated the Planning & Zoning Commission will be looking at potentially redefining alternative homes that could be acceptable substitutions to site-built homes.

G. Closure of the Public Hearing

M. HARTMAN CLOSED PUBLIC HEARING.

H. Discussion of the Variance Application among the Board Members

M. HARTMAN OPENED BOARD DISCUSSION TO INCLUDE CITY ATTORNEY JOE ESTES.

Ms. Hartman clarified that questions could be asked of City Staff and Mr. Estes.

Mr. Estes confirmed that questions could be asked of anybody in attendance.

Mr. Miller asked the applicant if had looked at the City Zoning Code prior to purchasing the lot.

Mr. Beaudoin said, no, but he did not feel it was necessary as he was using a licensed realtor. The property was being sold by a licensed realtor and he had been open about his intended use of the property.

Mr. Miller asked if it was correct that the home had been moved onto the property prior to getting confirmation from the city.

Mr. Beaudoin stated due to the advertising he didn't think there was a need to contact the city.

Mr. Miller asked questions in an effort to obtain as much detail as possible regarding Mr. Beaudoin's process. He also asked Mr. Beaudoin if it was correct that he purchased the property in August of this year.

Mr. Beaudoin stated that was correct.

Ms. Daily asked if it was correct that Mr. Ward had been out on the site and that he had obtained all the necessary permits.

Mr. Beaudoin stated, yes that was correct, he had gotten all the permits.

Ms. Daily asked Mr. Ward if he had gone out there.

Mr. Ward stated, yes, Mr. Beaudoin and I had already had a discussion and his electrical service was not in violation. Mr. Ward also stated it was several days later that we became aware there would be an issue.

Ms. Daily said she could appreciate that Mr. Beaudoin did not get all the information needed prior to investing money into establishing and updating his property.

Mr. Beaudoin said nobody at any point had said there would be an issue. It was his experience that everybody was happy to accept his checks, but the day the checks were done it was, "oh you can't do that".

Ms. Daily asked Mr. Ward if it was possible to have the home placed on a foundation and if so, would that be an acceptable alternative.

Mr. Ward stated it would need to meet all the specifications of a manufactured home and receive certification first and it would still have a zoning issue.

Ms. Daily asked the city attorney to clarify if he would still need to come back for a variance.

Mr. Estes, City Attorney stated that if it was a condition of the property and not something put into effect by the applicant, and as you know in order to approve a variance, there are specific aspects of the variance that the Board had to find that were met by the applicant. He clarified the variance process.

Mr. Miller commented that we had a different but similar situation a couple of weeks ago, it was denied because the zoning specifically states no RV's and no manufactured homes. The Mayor has asked the Planning and Zoning Commission to further the definition of what an RV is and what a manufactured home was.

Mr. Miller said when we grant a variance that sets a precedent and that creates a problem. He understood Mr. Beaudoin invested in the property, but thought it was on bad advice from his realtor. He didn't think that we could put a variance on it because it's a mobile structure, whether a concrete pad had been placed.

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He understood there are homes that were relocated to the neighborhood, and historically the neighborhood had been in disrepair, but it does not mitigate what the Board had to decide here.

Ms. Hartman asked the city attorney Mr. Estes if there was a way, we cannot make a ruling tonight since it had been mentioned that the city was working diligently on revising the code. There were going to be more of these instances coming up.

Ms. Hartman said she didn't want to discourage the tiny homes as it was an affordable alternative. She asked Mr. Estes if they could postpone this item and not make a ruling.

Mr. Estes said, yes, if the Board wants to make a vote to continue this to a future date, which was fine. If the intent were to take some ideas to the P&Z regarding addressing tiny homes; the appropriate definition of tiny homes, modular homes, and manufactured homes then you can continue it. The issue would be that it would not be able to be used as living quarters until some type of resolution was made.

Ms. Daily asked if someone could live in an RV for thirty (30) days maximum.

Mr. Ward stated that was correct, as a secondary. It would not be appropriate in this case since there was no primary structure on the property.

Ms. Daily said if we table this and it comes back, she wondered about the home, the structure itself, would that be something the P&Z would explore.

Mayor Budge said, yes, he had asked the P&Z to look at the whole issue of modular, manufactured, and RV's; what the definitions would be and how they could be used.

Ms. Daily asked what the determining process would be.

Mayor Budge said this was not going to be a one-month process. They were going to meet, discuss, hold a public hearing and it would come to Council. The Council would have to pass on ordinance, it takes two readings before it can be passed, then thirty (30) days before it became effective, so we were looking at about six (6) months down the road even if we started on it today.

Ms. Daily said let us just say the process happens and that Mr. Beaudoin comes to the city again asking to have this tiny home placed on his property, it wouldn't be permitted, and he's still needed a building.

Mayor Budge said, no, it was a zoning issue not a building issue. The zoning was R-1, and we'd have to change the zoning definition to allow this. What would be allowed was that he could move it to an RV place until such a time, if the rules change and then it can be placed.

Ms. Daily said with the building code, does a tiny home satisfy the building code?

Mr. Ward said, no it would have to meet the requirements of a manufactured home and be certified.

Mr. Miller said the question for him was, if the wheels were removed and it was placed on a cement foundation, would it then be site built.

Mayor Budge stated no.

Mr. Miller asked if P&Z would be looking at all of this.

Mayor Budge said, yes, they would be looking at the whole situation and how we can deal with this. They were also looking at how other cities are dealing with these things.

Ms. Hartman said if we grant this variance and allow this to stay there, what then happens.

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Mr. Ward said because of the property zoning we could not allow this.

Ms. Hartman asked if they could table and return his money.

Mayor Budge stated we do not return money on these.

Ms. Hartman said we do not want to discourage anyone from doing this. We have found ourselves in a quandary because what we have was a zoning code that does not come together with what you and a few others are trying to do. She said two weeks ago, we had a little bit different issue, and the Board could not grant a variance. We are looking for a compromise here, but we still must stick to the rules, but didn't want Mr. Beaudoin to think that we didn't want that there. We do, we just need to make sure it adheres to the building codes and the zoning. She felt like because of the zoning codes they were going to have to deny the variance.

Mr. Beaudoin stated he was at a loss, and asked if he was homeless then.

Mayor Budge said that he could move it.

Mr. Beaudoin said he could move it, but he had put all the money he had into moving here and settling in, he felt like anything he said here was going to be negative.

Mr. Miller said they understood that he had put all his money in along with his energy into all this stuff, but we just cannot do it.

Ms. Stetter said that as far as she could see this was of better quality than some of what was in that neighborhood.

Ms. Daily stated that she agreed with Ms. Hartman, this was a tough decision to make and the process that it would have to go through to change what would be accepted Mr. Beaudoin would have no place to live. She concurred with Ms. Stetter that it was well constructed home, and it was in better shape and safer than what was in the neighborhood.

Mr. Ward said there was also the option of thirty (30) days, as you said, not there but on another occupied parcel, it would be permissible for the thirty (30) days at a time.

Ms. Hartman asked if we could grant a thirty (30) day permit if we table this item.

Mr. Ward said that it would have to have a primary structure on the property before that was an option.

Mr. Beaudoin stated his personal situation, and where he was right now. He understood the need to work out all these semantics. He was perfectly willing to work with the city. If found to be homeless he would have to figure something out.

**** NOTE THE AUDIO DROPPED AND WAS INAUDIBLE FROM 39:43 TO 40:58 IN THE RECORDING. ****

Mr. Miller said as the Board we can table this and if Mr. Beaudoin was willing to come before the Board in about six months.

Mayor Budge said we could not predict how long this process would take.

Ms. Hartman said the applicant did have the option if it was not passed by the Board of Adjustment to go before Superior Court.

Mayor Budge said there was also recourse from the realtor from what he was told.

Mr. Beaudoin said absolutely.

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Mayor Budge said that may give you something that you can use, but again the only option is to move forward until all this gets sorted out.

Ms. Hartman stated that she was ready to make a call for a motion.

I. Call for Motion and Decision by the Board

MOTION: Mr. Miller motioned to deny the application.

SECOND: Ms. Hartman

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ROLL CALL VOTE

AYES: Daily, Hartman, and Miller

NAYS: Stetter

MOTION PASSED 3/1 (Stetter)

Ms. Daily said unfortunately she felt that the Board's hands were tied because of the self-imposed statute by the state. She did not feel as though the Board had the option to allow this variance and it begged the statement that she felt really bad about it. It was not that we did not want Mr. Beaudoin here.

Mr. Miller said that was his sentiment also and told Mr. Beaudoin that he was really sorry.

Ms. Stetter said that the decision on her part, at the last meeting had to do with the belief that the people in that neighborhood had restrictions. In Saginaw she did not see the same kind of restrictions. She did not think that this meeting should have happened and was disappointed that the Board was even here. She could not in good conscience deny it. She would like to see this tabled.

Mayor Budge stated there was a motion made.

Ms. Hartman reiterated again how sorry she was about this.

Mr. Miller encouraged Mr. Beaudoin to keep up with what the city was doing if he chose to stay here.

Mr. Beaudoin stated that he did not have anywhere else to go, unless someone had a better idea.

Mayor Budge said that there were several places that Mr. Beaudoin could put the home.

Mr. Beaudoin said that it blew his mind and was shocking how many municipalities are not keeping up.

Mayor Budge stated that everything moves slowly because it was a matter of the people and so unfortunately, he was sorry, but Mr. Beaudoin was the first to come before us with a tiny home and sometimes in the beginning the first is the hardest because we see where we have to go but we are not there yet.

ADJOURNMENT: 6:20PM

Ms. Hartman adjourned the meeting.