



**BOARD OF ADJUSTMENT MEETING**

**CITY OF BISBEE COUNCIL CHAMBERS LOCATED  
AT 915 S. TOVREAVILLE ROAD, BISBEE, AZ 85603  
TUESDAY, NOVEMBER 26, 2024, 5:30PM**

**CALLED TO ORDER: 5:39 PM MELISSA HARTMAN  
ROLL CALL- BOARD MEMBERS / STAFF**

	<b>PRESENT</b>	<b>ABSENT</b>	<b>EXCUSED</b>
<b>Tyler Bradberry</b>	----	----	<b>X</b>
<b>Cado Daily</b>	<b>X</b>		
<b>Melissa Hartman, Chair</b>	<b>X</b>		
<b>VACANT</b>	----	----	----
<b>Fred Miller</b>	<b>X</b>		
<b>Tom Patterson</b>	<b>X</b>		
<b>Sharon Stetter</b>	<b>X</b>		
<b>Ken Budge, Council Liaison</b>	<b>X</b>		
<b>Emanuel Stuart, Staff Liaison</b>	<b>X</b>		
<b>Xavier Rodriguez, Bldg. Inspector / Code Enforce.</b>	<b>X</b>		

**Agenda Item 1.**

**BOA 24-03**

**Applicant:** Andrew Anderson

**Location:** 402 Briggs Ave. Bisbee, AZ 85603

**Requesting a Variance:** Request to construct a steel carport that exceeds the allowed distance from the property line.

A. Opening of the Public Hearing

**Ms. HARTMAN OPENED THE PUBLIC HEARING**

B. Presentation by the Applicant

**Mr. Anderson spoke on his intention to build a carport for a client, explaining the project details and dimensions, and the intention to have the carport up to the property line. He said that there were many other carports and sheds that go up to the property line in the area. He said that this was not an excuse to allow his project to come up to the property line and expressed that this would be an open building. He also expressed that he was using steel to build the carport, but could also raise the fire rating by adding a layer of gypsum board or fire-resistant paint. He said the fire inspector said that the project may work with these fire-ratings.**

**Ms. HARTMAN OPENED THE FLOOR FOR THOSE IN FAVOR OF THE PROJECT.**

C. Summarization by City Staff

**Mr. Rodriguez spoke regarding the lot setbacks and said that the property was in the R-1 zone and as stated in table 5.2 had a setback of at least 5 feet. Also, according to the International Residential Code, openings were not permitted in exterior walls in buildings less than 3 feet from the property line. The Fire Inspector said that walls must not have openings or gaps.**

**He said he noticed one more potential issue. The design showed the structure coming up near the window, which could have obstructed the egress for the bedroom. In the picture, it appeared lower than it could have been, but as it was, it did reduce the clearance slightly.**

**MS. HARTMAN OPENED THE FLOOR TO THOSE IN SUPPORT OF THE PROJECT.**

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

**NONE.**

**MS. HARTMAN OPENED THE FLOOR TO THOSE OPPOSED TO THE PROJECT.**

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

**Mayor Budge expressed his concern about the potential fire hazard posed by the building and the difficulty it could create for firefighting. He explained that when fighting a fire, lacking access to all sides of both buildings presented a significant challenge. He noted that one reason for the fire code requirements was not only the risk of fire spreading between buildings but also the need to access all four sides for effective firefighting. In this case, the left side of the building would have been inaccessible because it extended right up to the wall. If firefighters had needed to pull a hose down that side to address a fire in either the building or the neighboring structure, they would have been blocked by the canopy overhead. He emphasized that this was an important factor to consider.**

F. Rebuttal by the Applicant

**The applicant clarified a few points regarding the Gypsum board. He stated that when looking at the specifications and ratings, he initially thought he included those details in the documentation, but later realized that he didn't. Specifically, there was a mention of needing the board on both sides of the studs. He wasn't sure when the Fire Inspector mentioned this but wanted to emphasize that he was not trying to misrepresent anything.**

**He said that regarding his conversation with the Fire Inspector, he understood that having the board on one side was sufficient, and based on the product specifications he reviewed, he understood that a single sheet of this board was sufficient for fire rating. He said he was not opposed to installing it on both sides—it's just a matter of adding a bit more labor for the client.**

**Regarding the design and in the photo, he pointed out that the wall doesn't extend all the way to the ground, noting a bit of space between the ground and the wall, as per the client's request to allow airflow. However, after consulting with the Building Inspector, he understood it now needs to extend fully to the ground and said that he has already updated the design to address this, though it was not reflected in the packet sent to the Board. He said they have ordered enough sheet metal to complete this adjustment.**

**He then showed the Board updated photos and said to let him know if further clarification was needed.**

G. Closure of the Public Hearing

**Ms. HARTMAN CLOSED PUBLIC HEARING.**

H. Discussion of the Variance Application among the Board Members

**Ms. HARTMAN OPENED BOARD DISCUSSION**

**The Building Inspector said the carport might become an issue of blocking the egress of the bedroom window where it comes up. It could be higher above the window as to not block it.**

**Mr. Patterson said that he agreed with the Building Inspector and the window should not be blocked, but the structure could go higher.**

**Mr. Miller asked to clarify if the front end and the back end were open on the structure.**

**Mr. Anderson clarified that yes, that's what the client wanted, but if it needed to be change it, it would not be a problem.**

**Mr. Miller asked if the funky shed in back would remain there at the end of the driveway.**

**Mr. Anderson clarified that yes, the client wanted to keep it. There was a 4-foot path between the shed and the house.**

**Ms. Daly clarified that since the proposed carport was open on both ends, fire access could pass through, with the 4-foot space by the tool shed in the back being the only pinch point.**

**Mayor Budge explained that, as a firefighter, "you need that 5 feet to the side so you can fight the fire, stop it from spreading next door, and have a way to get in and out without something over you that can trap you inside." He added that setbacks are crucial because "there could also be a car in there trapping you, catching fire, or whatever." Drawing on his experience, he emphasized, "I've been in some tight pinch points like that, and it's really, really dangerous—you don't even want to go there."**

**Mr. Miller said he took a drive up and down Briggs and noticed there were a lot of non-conforming structures there, for example, right next door, and tended to think that it was okay even given what the Mayor has said.**

**Mr. Patterson said that yes, it was like this up and down the street and asked if we should just let it spread it around a little bit further, or if we should strive to make the neighborhood better.**

**Ms. Stetter said she saw the building of the carport as an improvement to the existing shed against the property line since she thought it was an eyesore and an invitation for kids to climb up and play on the roof. She said it's a danger and the carport would block that off from access to children.**

**Mayor Budge said you could do that with a fence.**

**Ms. Stetter noted that chain link fences aren't ideal because children can climb them, and wood fences are even less suitable than the proposed metal and gypsum structure.**

**Mr. Miller said that's not the issue.**

**Ms. Hartman said to remember that their job was to make sure there was a reason for the**

Variance, and to grant a variance there needed to be a special circumstance. In this instance, the hardship was self-imposed.

Mayor Budge explained that one of the issues with the area was the presence of many non-conforming structures and said that “they didn’t get a permit or go through the proper channels.” He cautioned, “However, if you grant this variance, it goes on record, and then the next person can say, ‘Well, you gave a variance for this one, so I should get one too.’ That sets a precedent, and we deal with that in many cases. It’s not necessarily about the current system but about what happens next time.”

Ms. Hartman said her issue was that the shed was grandfathered in and that’s a shame, and without that there we wouldn’t have a problem.

Mr. Miller explained that the zoning code specifies accessory buildings should not be constructed in certain areas, but he argued this structure was not a building under the code’s definition. He noted that, based on a close reading, the carport could be allowable since it was not explicitly covered by the regulations. He defined a building as having four walls and a roof, suggesting the carport did not meet that standard. He acknowledged the possibility of closing this loophole in the future but stated that, as the code currently existed, it was not a building. He added that the commission could recommend approving the carport if the shed in the back, which might be a concern, was removed.

Mayor Budge said it doesn’t just say buildings it says private garages and Carports.

Mr. Miller said no, private garages and carports shall not be constructed closer to the Front-line lot it doesn’t say anything about the Side.

Ms. Daly noted that a car could still be parked in the area, regardless of whether there was a carport, stating that this could block firefighters from accessing the space either way. She added that the carport itself did not obstruct firefighter access to the back of the property. Ms. Daly also questioned whether the presence of the side wall made a difference but expressed a preference for it, explaining, “If it’s made of one-hour fire-rated material, it actually seems like it’s protecting this property from the shed that’s right on the property line, offering some fire protection.”

Ms. Stetter inquired if the primary issue was the overhead being fully enclosed and asked whether some of the overhead panels could be made open-air.

Ms. Hartman said she did not believe that that was the issue but rather the proximity to the property line.

Ms. Daly stated that she agreed with Mr. Miller’s interpretation, emphasizing that the structure in question was not an accessory building. She referenced section 6.3.1(D), which specifies that a carport should not be constructed closer to the front line but does not explicitly mention a required distance from the side.

The Building Inspector stated that he disagreed, explaining that he interpreted an accessory building to include private garages, carports, ADUs, or similar structures. He acknowledged that others might interpret it differently.

**Ms. Daly asked why accessory buildings and private garages were separate.**

**The Building Inspector said it was because the code allowed the building of a carport or a private Garage in front of the house.**

**Ms. Daly asked the building inspector how he would define an accessory Building.**

**The Building Inspector stated that any shed, carport, private garage, Ramada, gazebo, or similar structure required a building permit. He also emphasized that no such structure could be built against the lot line and must maintain a five-foot setback.**

I. Call for Motion and Decision by the Board

**MOTION:** Mr. Miller moved to approve the variance under consideration.

**SECOND:** Ms. Stetter

**ROLL CALL VOTE**

**AYES:** Miller, Stetter,

**NAYS:** Daly, Hartman, Patterson

**MOTION FAILED 2/3**

The Board advised the applicant to work with staff to explore potential other courses of action.

**ADJOURNMENT: 6:10PM**

**Ms. Hartman adjourned the meeting.**