



BOARD OF ADJUSTMENT MEETING MINUTES

**CITY OF BISBEE COUNCIL CHAMBERS LOCATED AT
118 ARIZONA STREET, BISBEE, AZ 85603
WEDNESDAY, SEPTEMBER 17, 2025, 5:30PM**

CALLED TO ORDER: 5:35 pm

ROLL CALL- BOARD MEMBERS / STAFF

	PRESENT	ABSENT	EXCUSED
Tyler Bradberry	X		
Cado Daily	---	---	X
Melissa Hartman, Chair	X		
Fred Miller	X		
Sharon Stetter	---	X	---
Kathleen Buchanan	X		
VACANT	---	---	---
Mel Sowid, Council Liaison	---	X	---
Emanuel Stuart, Staff Liaison	X		
Xavier Rodriguez, Bldg. Inspector / Code Enforce.	X		

Agenda Item 1.

BOA 25-04

Applicant: Norman Miller, Owner

Location: 61 Opera Drive Bisbee, AZ 85603

Requesting a Variance: Variance for the construction of a pagoda, on a property with no main building

A. Opening of the Public Hearing

MS. HARTMAN OPENED THE PUBLIC HEARING

B. Presentation by the Applicant

Mr. Miller presented the application for the variance. He requested permission to build a pagoda on a property with no main building which is required under current zoning regulations for the property located at 61 Opera Drive in Old Bisbee. He explained that he and his wife had purchased the property in 2017 with the intent to build. Their first step had been to construct a retaining wall, for which they secured a permit. Due to health issues and difficulties with the contractor, however, the wall had taken nearly two years to complete.

Over the years, they had added garden beds and patios and a small storage shed that was approved by the Design Review Board (DRB). Joel Ward had observed the construction, and while the shed did not require a permit because it was under 20 square feet, it still drew his attention. Later, over the lower patio, they had begun to construct a pergola, intended primarily as a shaded retreat during the summer and a shelter from the monsoon rains.

He explained that Javier had told him the structure was illegal, which had surprised him. After looking up the regulations, he understood that residential areas were not meant to include workshops or garages. However, he emphasized that the space was used only for

residential purposes; as a garden, outdoor kitchen, dining area, sitting area, and place for entertaining. Together with the other improvements, these structures made the space feel like a front yard.

C. Summarization by City Staff

After review, the City Planner was unable to recommend approval, stating that the zoning code required a principal structure to be established before any accessory buildings were allowed. Accessory buildings were subordinate by definition and could not exist independently. Allowing one before the primary structure would conflict with the code and set a precedent that undermines orderly development in Old Bisbee.

D. Comments by persons in favor

NONE

E. Comments by persons opposed

NONE

F. Rebuttal by the Applicant

He explained that when they moved to Bisbee, they had been told that code was code, but neighborhood standards also played a role. In the older part of Bisbee, setbacks and lot requirements were very tight. He noted that he had one of the larger lots in the area, and under a 6,000-square-foot minimum, his lot would not even qualify to build a structure without a variance.

He pointed out that a structure had already been built and approved through the DRB, and the city had overseen the construction of the small storage shed. He acknowledged the concerns raised but emphasized that the additions did not compromise the residential character or integrity of the neighborhood.

G. Closure of the Public Hearing

MS. HARTMAN CLOSED THE PUBLIC HEARING.

H. Discussion of the Variance Application among the Board Members

Mr. Bradberry explained that this was a very unique property and situation. He had somewhat worked with Mr. Miller and had experienced the situation alongside him. Mr. Bradberry understood Miller's intentions. He noted that the house on Taylor Avenue had no yard space and was surrounded by city property. While he could understand why the city planner might have objections, he felt the situation was unique and warranted consideration. He saw no reason why Miller could not continue the outdoor living area he had already created. A shed had been approved, and a deck had been built; the current structure was simply intended to shade the deck. Bradberry acknowledged the challenges of building on the lot due to square footage and hillside constraints. Given that prior structures had been approved, he felt denying the current addition would be like going backward. He believed the improvements beautified the area and could serve as a first step toward a future structure.

Ms. Hartman asked whether Miller owned both 61 and 63 Opera Drive. Mr. Miller confirmed that he did, adding that he had not realized until signing the deed that they were two separate properties. Ms. Hartman asked whether he had considered combining them into a single parcel. Miller replied that he had not, noting that 63 had no primary structure, and combining the parcels would still require a variance due to the 6,000 square-foot minimum.

It was clarified that in Old Bisbee, it is a 4,000-square-foot minimum.

Mr. Miller explained complications with utilities, including power and sewage, and noted delays and challenges with the retaining wall contractor. He said these circumstances had influenced decisions about development on the lot and that they had been planning footwork to eventually build there, while also considering visual impacts from the hillside. Miller acknowledged that combining the parcels could be a future option for development.

Ms. Hartman then asked if the existing shed was a nonconforming structure. Mr. Miller explained that it had been built before the city required permits for sheds. DRB had approved the shed's design, but the board did not evaluate zoning compliance.

Mr. Bradberry asked if Miller had approval for the current structure. Mr. Miller replied that he did not, explaining that a friend from RL Workman Homes had begun the work under the understanding that a permit was not required for open-sided structures. Mr. Miller had spoken with Xavier and apologized, committing to submit a building permit and pay any applicable fees the following day.

Ms. Kathleen Buchanan expressed confusion regarding prior approvals. Mr. Miller clarified that the 61-63 lot had never had a pre-approved house. When they purchased the property, the east retaining wall had been destroyed, making the lot inaccessible. Significant remediation was required before any building could occur. He explained that their original plan to build had changed due to purchasing a neighboring property and logistical challenges with their builder.

Board Member Fred Miller added his observations. He noted that the property had long-standing problems, and he appreciated that someone had taken the initiative to improve it. He supported the current effort as a beautification project for the neighborhood and for the Millers' personal use. While he wished the proper approvals had been obtained earlier, he acknowledged that such oversights were common. He indicated support for limiting future structures to fixed residential uses only, without workshops or garages, to preserve the intent of the project.

I. Call for Motion and Decision by the Board

Ms. Hartman asked if they wanted to entertain a motion.

MOTION: Mr. Fred Miller moved to approve the variance.

SECOND: Mr. Bradberry

ROLL CALL VOTE

AYES: Hartman, Bradberry, Miller

NAYS: Buchanan

MOTION PASSED: 3/1-Ms. Buchanan

Agenda Item 2.

BOA 25-03

Applicant: Doug Nystrom / Elivia & Felipe Villa, Owner

Location: 503 Harrison Avenue Bisbee, AZ 85603

Requesting a Variance: Variance to extend the existing front porch roof to a 5-foot setback, which is less than the required setback under current zoning regulations.

A. Opening of the Public Hearing

MS. HARTMAN OPENED THE PUBLIC HEARING

B. Presentation by the Applicant

Mr. Doug Nystrom presented the application. He explained that he was there to discuss a modification of the setback at 503 Harrison Avenue, a property owned by Elivia and Felipe Villa. Elivia had been operating a takeout restaurant service there, along with other related restaurant activities.

The request asked for a setback that is less than the required ten-foot setback in the Infill Residential Zone. For some time, Elivia had been using the patio area outside the structure with temporary canopies, concrete blocks, and ropes. To improve safety and durability, it was suggested that she replace these with a more permanent structure to better accommodate outdoor dining.

They were asked to prepare a quick sketch of a plan that would allow for a five-foot setback instead of the required ten. The proposed structure was designed to align with the objectives of the Infill Residential Zone, which encouraged pedestrian-scale development and flexible setbacks for small neighborhood businesses such as markets, cafés, restaurants, and salons.

The suggested design placed the structure at just over a five-foot setback. It would have no walls, only an open metal roof matching the existing porch of the 70-plus-year-old building it adjoined. The city's building department had already been contacted before he was involved, and their advice was to explore this type of permanent solution for the patio space.

He added that Elivia had long operated a food truck on the site and that the new structure would be a practical way to protect her business from weather and wind. He concluded by noting that the proposal seemed to be a win-win solution, providing both compliance and improved functionality for the business.

C. Summarization by City Staff

After reviewing the request and neighborhood conditions, the City Planner noted that several nearby properties were built between five and ten feet of the front property line. Based on these findings, the Planner recommended approval to the Board of Adjustment.

The Bisbee Zoning Code supported this recommendation. Article 5.1 allowed setbacks to be determined by comparable lots in developed areas, and Article 6.3.2 permitted porches and similar projections as close as two feet from the boundary, subject to building and safety code requirements.

D. Comments by persons in favor

Ms. Shelley Pritzkau spoke in favor and said she lived across the street. She said she applauded their effort to make the neighborhood nice, and the project has her complete support.

Ms. Elivia Villa, who lives at 503 North Harrison, stated that she loved her porch and enjoyed sitting there each summer morning with her husband to drink coffee. She explained that she had wanted to extend the porch for about four years and expressed her strong appreciation for it.

E. Comments by persons opposed

NONE

F. Rebuttal by the Applicant

NONE

G. Closure of the Public Hearing

MS. HARTMAN CLOSED THE PUBLIC HEARING.

H. Discussion of the Variance Application among the Board Members

Mr. Miller said he had visited the property the day before and had seen Elia and her husband sitting under the porch having coffee. He noted that it was a nice structure that added to the neighborhood. His concern was that this was a retroactive request since the structure had already been completed. He questioned whether a building permit had been obtained and pointed out that a stop work order had been issued before the owners applied for a permit. He expressed surprise that they had not applied for a permit before beginning construction.

Ms. Buchanan said she was in favor of the request.

Ms. Hartman said she was also in favor of the request.

Mr. Bradberry said he had observed the structure going up and initially thought it was simply a new porch. He had not realized it would be used as part of the business. He asked whether the concrete patio had already existed and whether the structure had just been built over it.

Mr. Nystrom said the concrete had already been there, but the front posts were placed slightly differently than originally planned.

Mr. Bradberry said it sounded to him like they had essentially just covered an existing patio. He noted that with the standard ten-foot setback, the extension would have only gone about seven feet beyond the existing covered porch, but the new design provided an additional five feet. He acknowledged that the structure remained within the property's wall and gate, that it was not habitable space, and that it fit the neighborhood. He added that the adjacent house to the south was also very close to the property line, so the request seemed reasonable.

Mr. Nystrom said most of the surrounding neighborhood already had some setback violations.

Mr. Bradberry said he agreed, noting that this was why it was important to look at comparable situations nearby. If many surrounding properties already encroached on setbacks, it was difficult to deny a similar request.

I. Call for Motion and Decision by the Board

Ms. Hartman called for a motion.

MOTION: Mr. Bradberry moved to approve the variance.

SECOND: Ms. Hartman

ROLL CALL VOTE

AYES: Hartman, Bradberry, Miller, Buchanan

NAYS: NONE

MOTION PASSED: UNANIMOUSLY

Pursuant to A.R.S. 38-431.03(A)(3), the Board may vote to enter into an executive session at any point during this meeting for discussion and consultation for legal advice with its attorney(s).

ADJOURNMENT: 6:15 pm

Pursuant to A.R.S. § 38-431.02(H), The public will have physical access to Council Chambers 15 minutes before the meeting is scheduled to begin.

Anyone needing special accommodation to attend this meeting should contact the City Clerk office at (520) 520-432-6000 at least twenty-four hours before the meeting.

Public documents referred to herein may be viewed during regular business hours at the City Clerk's Office at 118 Arizona Street, Bisbee.