



MINUTES

BOARD OF ADJUSTMENT MEETING

CITY OF BISBEE COUNCIL CHAMBERS LOCATED AT
118 ARIZONA STREET, BISBEE, AZ 85603
MONDAY, APRIL 20, 2026, 5:30PM

CALLED TO ORDER: 5:30PM

ROLL CALL- BOARD MEMBERS / STAFF

	PRESENT	ABSENT	EXCUSED
Tyler Bradberry	X		
Kathleen Buchanan	X		
Cado Daily	X		
Alisia Espiriti	X		
Melissa Hartman, Chair	X		
Fred Miller	X		
VACANT	---	---	---
Mel Sowid, Council Liaison	---	---	X
Emanuel Stuart, Staff Liaison	X		
Xavier Rodriguez, Bldg. and Zoning Inspector	---	---	X
Claudio Estrada, Code Enforcement Officer	X		

Agenda Item 1.

BOA 26-02

Applicant: David Hallikainen, Owner

Location: 103-63-019A located adjacent to 27 High Road Bisbee, AZ 85603

Requesting a Variance: Variance for the construction of a shed, on a property with no main building which is required under current zoning regulations.

A. Opening of the Public Hearing

- MS. HARTMAN OPENED PUBLIC HEARING.

B. Presentation by the Applicant

- Mr Hallikainen presented his case.

Mr. David Hallikainen stated that he has a neurological disability and cognitive impairment similar to early-onset Alzheimer's disease and asked for patience when presenting his remarks resulting in significant difficulty with executive functioning.

He explained that he had owned the property at 27 High Road for approximately four years. At the time of purchase, he reviewed the regulations and understood that an auxiliary structure of up to 150 square feet could be built without a permit. Relying on that understanding, he constructed a shed measuring approximately 140 square feet, believing he

was fully compliant. He stated that the structure was subsequently red-tagged. Immediately upon receiving the red tag, he contacted the Planning Department, spoke with Xavier, and met with city staff that same afternoon. At that point, he believed the matter would be resolved collaboratively, but he later became disappointed when that cooperation did not continue.

Mr. Hallikainen stated that he informed city staff of his disability and explained that under Title II of the Americans with Disabilities Act (ADA), municipalities are required to provide assistance to individuals with disabilities when interacting with government agencies. He believed this disclosure initially led to a positive and productive discussion.

He explained that the purpose of the shed was related directly to his disability. The shed was intended to allow him to store the bicycle at street level and avoid the dangerous stairs, rather than pursuing an ADA claim against the city for the condition of the steps.

Mr. Hallikainen stated that the steps between the house and the shed serve as a public hiking route and therefore constitute a public recreational service under the ADA, placing them within ADA jurisdiction. He indicated that concerns regarding the steps and the city attorney's refusal to comply with public records laws had been referred to the Attorney General's Office, which had initiated an investigation.

He explained that after it became apparent that the city was no longer addressing the matter collaboratively, he submitted a public records request seeking all documents related to 27 High Road, including complaints, notes, and photographs, with appropriate redactions. He stated that the response consisted primarily of partial copies of his own emails and did not include other relevant materials.

Mr. Hallikainen recounted that when he met with planning staff, including the Building Inspector, he was told that the steps could not feasibly be made ADA-compliant and that installing a lift would be required. He was also informed that the location where he intended to build the shed was not considered a buildable property because it did not contain a primary structure. He stated that while he believed the ordinance language was relatively clear, ADA law requires municipal policies to yield when necessary to meet ADA objectives.

He further explained that planning staff directed him to contact Nina Williams. When he did so, she informed him that a plat plan would be required and discussed the possibility of transferring property interests, which he stated the building inspector described as a common approach in similar situations. Mr. Hallikainen maintained that there is no feasible way to exit his home without crossing city property and that he therefore possesses an easement of necessity and a continuous real property interest across the parcels, even if he does not hold fee simple ownership. He believed the city erred by failing to recognize that interest, particularly given the ADA context, and that this failure constituted a violation of the ADA.

Mr. Hallikainen stated that due to the city's refusal to modify its policies or assist him meaningfully, he was forced to retain legal counsel at significant personal expense, something he had tried to avoid given his existing health challenges.

He said a subsequent site meeting requested by his counsel, for which it was specifically asked that Nina Williams attend. She did not appear, and the city did not notify the attendees in advance. At that meeting, the city attorney stated—without providing justification—that the city would not fix the steps, asserting that doing so would require fixing all similar steps throughout the city. Mr. Hallikainen stated that this assertion was incorrect under ADA law, as ADA jurisdiction applies only where a public service is implicated and where a disabled individual requires access.

Mr. Hallikainen further explained that under federal ADA guidance and Department of Justice materials, refusal to comply with public records laws and stonewalling are strong indicators of bad faith. He stated that this had characterized his experience throughout the process. He noted that he had previously practiced law and was familiar with discovery procedures, including privilege logs, which he requested but was told were not required. He asserted that the blanket claim of attorney-client privilege over all remaining records was improper and that the failure to produce emails from the city manager's office constituted a violation of state public records law.

He emphasized that the entire dispute arose from his attempt to build a simple garden shed and expressed frustration that the matter had escalated to the point of Attorney General involvement and significant legal costs. He stated that an interview with the Attorney General's Office had been scheduled for June.

Mr. Hallikainen explained that upon further reflection, the proposal of a property transfer emerged as the most practical solution. He suggested that if the city transferred ownership of the steps to him, the steps would fall outside ADA jurisdiction. He would then grant a full public easement to preserve access to the hiking trail, resulting in no substantive loss to the public. He noted that the steps are shown on plat maps as a future extension of High Road, but he stated that such an extension is unrealistic given the configuration of his home and would in any event require condemnation.

He further explained that installation of a lift by the city would be far more expensive due to commercial public-use standards, whereas a lift installed on his own property would be significantly less costly. He concluded that transferring the property and allowing him to address accessibility on his own land was the most reasonable and cost-effective resolution.

Mr. Hallikainen stated that while he understood the body was focused on the variance issue, he believed it was necessary to provide the full context. He concluded by stating that he wished only to live quietly, manage his disability safely, build his shed, and access his home without risking serious injury.

C. Summarization by City Staff

The City Planner explained that the variance request before the Board concerned Zoning Code Article 6, General Provisions, Section 6.3, Additional Area Regulations, specifically Section 6.3.1 governing accessory buildings. He stated that this section prohibits construction of an accessory building on a lot before construction of a main building has begun. The requested variance sought relief from this requirement.

The Planner read the staff report into the record so all parties could hear and reference it. He summarized the case as a request for hearing, discussion, and possible action on a zoning variance to allow placement of an accessory shed on a parcel that does not contain a primary structure. He clarified that the decision authority rested with the City of Bisbee Board of Adjustment, and that he was present to provide clarification and answer questions as needed.

He explained that the proposed accessory structure would be constructed on a parcel adjacent to another parcel containing the primary residence. He noted that the parcels could not be combined because a city right-of-way exists between them. He described the subject property as being located along High Road in an area characterized by limited development intensity, irregular parcel configurations, and development patterns typical of Old Bisbee. He stated that the proposed shed placement was consistent with development patterns in the surrounding area and that there were no immediately adjacent residential structures in close proximity to the proposed location. He further noted that surrounding properties generally feature significant setbacks and changes in elevation.

The Planner outlined the criteria the Board of Adjustment must consider in evaluating the variance request. He stated that the Board may assess whether special circumstances related to the property or its surroundings distinguish it from other properties within the same zoning district, whether strict application of the zoning ordinance would deprive the property of privileges enjoyed by others in similar circumstances, and whether granting the variance would constitute a special privilege or alter the permitted uses within the R-1 zoning district. He added that any variance granted could include conditions to ensure consistency with the intent of the zoning ordinance and to prevent the establishment of precedent.

He emphasized that any granted variance must not result in special privileges inconsistent with those of neighboring properties. He also stated that the Board may not change permitted uses within a zoning district and may not grant a variance if the special circumstances are self-imposed by the property owner.

The Planner referred the Board to the exhibits included in the staff report, including maps and photographs showing the two parcels and the city right-of-way between them. He described the images depicting the location of the primary residence, the accessory structure under construction, the stairway located within the city right-of-way, and the relative placement of the road and parcels. He clarified, during questioning, that the stairway was city property and that the right-of-way ran between the parcels, resulting in a very constrained physical layout.

He concluded by stating that staff was deferring the decision to the Board of Adjustment and left the matter for the Board's consideration.

D. Comments by persons in favor

City Staff read a letter of support submitted by Beau Marie, a neighbor of the property at 27 High Road through their father's adjacent property at 29 High Road. They stated support for the proposed shed, provided that the construction did not encroach on the father's property, and as long as they were not asked to help build the shed.

E. Comments by persons opposed

NONE

F. Rebuttal by the Applicant

Applicant stated they didn't want to make a big deal out of it.

G. Rebuttal by City Staff

The city attorney stated that, while he disputed the ancillary issues raised by the applicant, the city had no objection to the requested variance.

The Planner stated that he had nothing further to add at that time.

H. Closure of the Public Hearing

Ms. Hartmand Closed the public hearing.

I. Discussion of the Variance Application among the Board Members.

The Board Discussed.

Each member of the Board asked questions of the applicant.

Ms. Espiriti asked if a survey had been conducted.

The applicant said they were unable to get a survey and didn't know if it was necessary. He thought a legal description would be sufficient for a real property transfer.

Ms. Espiriti asked if the applicant had gone to the County Recorder's office and looked at the plat maps.

The applicant said he went to the Assessor's office.

Mr Bradberry asked when the stop work order was issued.

The applicant said he didn't know, but it had been a long time.

Ms. Daily said the intent of the ordinance was to ensure no one builds a shed before the building of a house. said the residence was clearly present and that the shed was intended to be located close enough for access. She noted that the only legal obstacle appeared to be the city right-of-way.

She said that, for all practical purposes, the two parcels would effectively be combined if not for the city right-of-way. In her opinion, the request met the intent of the ordinance because there was an existing residence and the shed would function as an accessory structure. They added that, given familiarity with disability-related challenges, she believed the request was reasonable.

Ms. Buchanan asked how long the applicant had the illness.

The applicant explained their illness.

Ms. Buchanan asked if there was parking on their property.

The applicant said yes.

Ms. Buchanan asked whether he had to walk the stairs even when not using the bicycle.

The applicant explained that the shed was intended to buy time in case his condition worsened and that he had been attempting to avoid raising ADA issues with the city.

Ms. Buchanan remarked that it might have been safer to purchase a home without elevation changes.

Mr. Miller asked whether he had known at the time of purchase that there was a city right-of-way adjacent to the steps.

The applicant said the fact was public record but stated he had not fully understood its implications. He said he had spoken with a former mayor at the time.

Mr. Miller confirmed that the steps and right-of-way were city property, and the applicant agreed.

The Board asked again whether the applicant understood the steps were city property or an easement.

The applicant responded that he knew they were city-related but that it had been unclear whether they were an easement, adding that discussions about moving easements had occurred at the time.

Mr. Miller said he sympathized, noting that Old Bisbee was difficult to navigate for people with disabilities. He said he had visited the site and noted that the trail connected to a broader city system, making public access important.

The applicant agreed.

Mr. Miller said he understood the request for a variance and believed it might be a solution.

Ms. Hartman said the role of the Board was to only consider the variance request and not the other issues brought up. They acknowledged the applicant's other concerns but stated those were outside the board's jurisdiction.

Mr. Bradberry said the city right-of-way limited available options. He noted that a property transfer might help but raised concerns about maintaining public access. He stated that he felt the variance was appropriate and noted that additional permitting requirements would still apply, particularly because the property was in a historic district. They added that a survey would be important.

Mr. Miller said they supported construction of the shed if regulations were met and suggested that legal staff explore an easement or property transfer that would permanently preserve public access. He wanted to make a suggestion to amend the motion to allow the transfer of property with an easement.

The City Attorney said that was not possible.

J. Call for Motion and Decision by the Board

MOTION: Ms. Daily motioned to grant the variance for the construction of a shed on the property without a main structure, which is required under current regulations.

SECOND: Ms. Hartman

MOTION PASSED: UNANIMOUSLY

The applicant asked if they could get a setback variance.

City Staff said that this would require a separate Variance request.

Mr. Bradberry said the Design Review Board may be able to give an answer on this request.

Agenda Item 2.

BOA 26-03

Applicant: Lynelle Gae, Owner

Location: 207 Pittsburg Avenue Bisbee, AZ 85603

Requesting an Appeal: Appeal of a Notice of Violation letter received for Violation of the City of Bisbee City Code Article 7.10 Light Pollution, Subsection 7.10.5A(1)(2)(3)(4)(5) Mounting Height, Shielding and Light Trespass due to no lamp or light source should be directly visible from any other property and the City of Bisbee Zoning Code Article 6 General Provisions, Subsection 6.4A (1)(2) Walls and Fences due to parts of the fence that are not in compliance with code.

A. Opening of the Public Hearing

Ms. Hartman opened the Public Hearing.

B. Presentation by the Applicant

Lynelle Gae

C. Summarization by City Staff

The Code Enforcement Officer, Mr. Estrada presented the city staff summary addressing two appeals: one related to light concerns and one related to walls or screening. Regarding

the light issue, Mr. Estrada stated that staff found no exterior lighting fixtures on the property. However, he explained that the concern involved light visible from neighboring properties. He stated that the source appeared to be interior lighting visible through uncovered windows. He noted that installing curtains or window coverings would reduce the light visible outside and bring the property into general compliance.

Regarding walls and screening, Mr. Estrada stated that although the resident asserted there were no fences in violation, staff determined that existing privacy structures functioned as screening elements subject to zoning standards. He stated that these elements were evaluated based on their impact on neighboring properties and height limitations.

Mr. Estrada concluded that approving the appeal would result in special treatment inconsistent with other properties in the area and that the conditions prompting the appeal appeared to be created by the property owner.

D. Comments by persons in favor

NONE

E. Comments by persons opposed

NONE

F. Rebuttal by the Applicant

Ms. Gae stated that the city code addressing signs or posters on stakes does not apply to her property. She asserted that the code does not address privacy screens, roll-up window shades, or trellises, and that these features do not constitute walls or fences. She further stated that the privacy screen and trellises had been in place for approximately 20 years.

G. Rebuttal by City Staff

Mr. Estrada said we were here to discuss it and come up with a solution, finally leaving the Board to give their opinion.

H. Closure of the Public Hearing

The Public Hearing was closed.

I. Discussion of the Appeal Application among the Board Members

Ms. Daily asked a question regarding the lighting section of the city code. The member referenced the definition of residential lighting and noted that it described outdoor lighting for single or multiple household dwellings and asked whether an interior light would fall under this regulation,

The City Attorney responded that the referenced definition applied only to outdoor lighting. Staff confirmed that the code, as written, regulated exterior lighting and did not apply to interior lights.

Ms. Daily asked whether the Board should address the lighting issue first and then move on to walls and fencing, or whether the applicant should address both issues at once.

Ms. Daily also stated that she had visited the property and observed that the fencing at the front of the property appeared to be four feet or lower. She noted that there was substantial vegetation along the sides of the property between neighbors and stated that the existing screenings did not obstruct views or block additional light beyond what the vegetation already blocked. They reported that the structures did not appear to be solid or permanent fencing, but rather screening elements.

Mr. Miller stated that he had reviewed the city code and believed it applied to exterior lighting rather than interior lighting. They also stated that they had observed posts with reflective or metallic material and believed these were used to block cameras facing the applicant's yard.

They presumed this was the purpose for erecting the structures. He stated that they had spoken with a nearby neighbor who described the situation as a long-standing dispute between neighbors. The board member noted this was mentioned only as additional context.

He then asked why the applicant did not simply install a shade on the upper-story window, noting that the original complaint appeared to be about light emanating from that window onto a neighboring property. He also stated that he did not understand the alleged fence violation and requested clarification. They explained that while fencing height standards existed, the items described appeared more like screening elements rather than fences.

City staff said that the structures might fall under the definition of screens rather than fences.

Mr. Miller responded that this was a broad interpretation and noted the structures consisted of individual posts rather than continuous fencing. He said that he didn't think this was a violation of the fence code.

The applicant explained that the privacy screen extended along the length of the property and into the adjacent lot. The applicant stated that measured from the upper lot level, the screen height was six feet. The applicant clarified that plants grew higher than the trellis support but that the support structure itself did not exceed six feet. The applicant added that the posts were not placed on the upper level in order to avoid damaging an existing retaining wall.

Mr Bradberry clarified the applicant's statement that the privacy screen had been in place for approximately twenty years.

City staff said the privacy screen was compliant but clarified that the issue was not the fence itself, but rather the elevated screening elements attached to posts. The board member acknowledged that they initially believed the structures exceeded height limits and stated that the determination hinged on whether the structures were considered fences or screens.

Ms. Hartman asked for clarification, stating that there appeared to be two issues being considered under the notice of violation and asking whether both were part of the appeal.

Code enforcement staff explained that the notice of violation included both issues and that the appeal process allowed the Board to determine whether a violation existed and whether the structures should be classified as fences or screens.

The applicant stated that the camera shields were movable, non-permanent, and relocated when cameras moved. She expressed the opinion that these elements were not structural and therefore did not constitute fences.

Ms. Hartman stated that the matter appeared to be part of an ongoing neighborhood dispute and expressed concern about the appearance of some of the screening elements but emphasized that aesthetic concerns did not necessarily equate to a code violation.

Ms. Espiriti said she thought the camera shields are not structural and did not constitute a fence.

Ms. Daily stated that although the interior light did not appear to violate the lighting code, she would encourage the applicant to install a window shade and explained that lighting regulations were intended to minimize light impacting neighboring properties and referenced dark-sky and wildlife considerations.

Mr. Miller stated that he agreed the citation did not apply to interior lighting and believed the notice had been issued under an incorrect code provision. They reiterated that while the fence issue did not appear to be a violation, adding a shade would be a reasonable and neighborly solution.

Mr. Bradberry acknowledged the applicant's desire for privacy and described the items on the posts as posters and noted that, while he understood the intent, the situation might be less contentious if the items were less visually disruptive.

Ms. Hartman asked whether one or two motions were required.

City Staff concluded that a single motion would cover both issues because they were included in the same notice of violation.

J. Call for Motion and Decision by the Board

MOTION: Ms. Daily moved that the applicant has not violated the city of Bisbee code article 7.1 light pollution subsection 7.105A12345 mounting height shielding and light trespass due to no lamp or light source should be directly visible from any other property in the city of Bisbee and has not violated zoning code article 6 general provisions subsection 6.4A12 walls and fences.

SECOND: Mr. Miller

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: 6:45PM