



**Board of Adjustment Meeting
January 30, 2019 @ 5:30 pm
Board of Supervisors Hearing Room
1415 Melody Lane, Building G
Bisbee, Arizona 85603**

Action Agenda

The meeting called to order by Dennis Nelson at 5:30 PM

Roll Call - Board Members

	Present	Absent	Excused
Dennis Nelson- Chair	X		
Melissa Hartman- Vice Chair	X		
Michael Normand	X		
Vacant			
Vacant			
Thomas Patterson	X		
Peter Von Gundlach	X		
David Smith- Council Liaison to the Board	X		

Staff: Attorney Jana Flagler, Planning Manager Paul Esparza

NEW BUSINESS

Item 1. Appeal by Brian Laird of the decision of the Bisbee Design Review Board on September 5, 2018 regarding DRB Application 18-24 submitted by Jon Sky for design modifications requested in connection with the structure constructed at 429D Laundry Hill. The modifications granted 1) Revision of window placement due to interior wall change 2) Exterior staircase on north side of structure 3) Reduced building setbacks on north and east.

Chair Nelson called the meeting to order and identified the appeal that was being heard.

Chair Nelson introduced the BOA members.

Chair Nelson explained the hearing appeal process and identified DRB application 18-24. He explained the three modifications that are being appealed. 1) window placement 2) exterior staircase and 3) reduced setbacks on north and east. He admonished all parties and those present in the room to maintain civility.

Chairman Nelson called for the summary of the issues and relevant data by Planning staff.

Mr. Esparza gave a summary of the appeal and the materials that were provided to the BOA members...

Chair Nelson called for the applicant Mr. Sky and swore him in.

Mr. Sky argued that he has built his home in compliance with building codes and received DRB approval throughout the process.

Appellant Laird cross examined Mr. Sky

Chairman Nelson allowed questions from the BOA to Mr. Sky. BOA members Normand, Patterson and Hartman questioned Mr. Sky

Mr. Sky then called witness Ken Budge who was sworn in by Chairman Nelson.

Mr. Budge was questioned by Mr. Sky and responded to questions from BOA member Patterson.

Mr. Laird asked questions of Mr. Budge followed by BOA members Von Gundlach, Normand and Patterson.

Mr. Laird completed his questioning of Mr. Budge and Mr. Budge was excused as a witness.

Chairman Nelson allowed closing arguments from Mr. Sky.

Chairman Nelson called for a recess at approximately 6:54 PM.

Chairman Nelson reconvened the meeting and called for the appellant to present his position.

Mr. Laird stated he would testify first and Chairman Nelson swore in Mr. Laird.

Mr. Laird presented testimony.

Mr. Sky was permitted to cross examine Mr. Laird.

Mr. Sky concluded his line of questioning.

BOA member Normand asked Mr. Sky about the photo simulation of other residential structures shown on the Sky property and Mr. Sky responded.

Chairman Nelson asked if there were BOA members with additional questions of Mr. Laird.

BOA members Patterson and Nelson questioned Mr. Laird.

BOA member Normand asked staff about a stop work order.

Mr. Esparza responded that no stop work order was issued.

Mr. Sky questioned Mr. Laird.

Mr. Laird then called witness Mr. Steve Sample, who was sworn in by Chairman Nelson.

Mr. Laird questioned Mr. Sample.

Mr. Sky was permitted to cross examine Mr. Sample.

BOA members Normand and Patterson questioned Mr. Sample.

Mr. Laird completed questioning of Mr. Sample.

Chairman Nelson asked if there were further questions.

BOA member Patterson questioned Mr. Sky about the deck.

Mr. Sample was released as a witness and Mr. Laird closed his presentation.

Chairman Nelson called for closing remarks from the parties after a battery change on the video recorder.

Mr. Sky made closing remarks.

Mr. Laird made closing remarks.

Chairman Nelson concluded the witness testimony presentation of exhibits phase.

Chairman Nelson called for discussion of the three issues to affirm, reverse or modify the action of the DRB.

1. Window Placement

Chairman Nelson stated the three issues before them would be voted upon separately starting with the window placement due to an interior wall change.

A motion to affirm the DRB's approval of the window placement was made and Board discussion ensued.

Atty Flagler clarified the BOA's duty to affirm, reverse or modify a decision of the DRB.

Board discussion continued.

Chairman Nelson called the question

Motion: Move to affirm the DRB approval of the window placement **Action:** Affirm

Moved by: Normand **Seconded by:** Hartman

Vote: Motion passed (**Summary:** Yes = 4, No = 1, Abstain 0)

Yes: Mr. Nelson, Ms. Hartman, Mr. Normand, Mr. Von Gundlach, **No:** Mr. Patterson

2). Staircase

Chairman Nelson asked for a motion to affirm, reverse or modify the DRB decision to allow the staircase on the north side of the house. Motion was to approve was made and seconded.

Board discussion followed.

Chairman Nelson called the question.

Motion: Move to affirm the DRB decision to approve the external staircase **Action:** Affirm

Moved by: Von Gundlach **Seconded by:** Hartman

Vote: Motion passed (**Summary:** Yes = 5, No = 0, Abstain 0)

Yes: Mr. Nelson, Ms. Hartman, Mr. Normand, Mr. Von Gundlach, Mr. Patterson

3). Setbacks

Chairman Nelson asked for a motion to affirm, reverse or modify the action of the DRB in granting an exception to Mr. Sky regarding the setbacks on the sides of the home.

Normand moved to “discuss a modification”. Seconded by Patterson

There was discussion by BOA members Hartman, Normand and Patterson

Atty Flagler clarified that the Board needed to include the modification requested as part of the motion being considered.

Board discussion continued.

BOA member Normand withdrew his motion

BOA member Patterson moved to reverse the DRB decision on reduced setbacks. Motion failed due to lack of a second.

BOA Member Normand requests that the BOA go into Executive Session.

Atty Flagler explained the purpose of an executive session and addressed questions re: continuing or tabling the item.

Chairman Nelson stated the Board may need more information to make a decision.

Atty Flagler stated that Board could reopen the evidentiary part of the hearing upon a motion to do so.

BOA member Normand moved that the Board go into executive session for legal process advice.

Chairman Nelson called for the vote to enter Executive Session and it was unanimous.

The Board adjourned into Executive Session at approximately 8:43 PM.

The Board returned from Executive Session at approximately 9:07 PM.

Chairman Nelson entertained a motion to close the executive session. Normand moved and Patterson second. The Chair called the vote. It was unanimous.

Chairman Nelson reconvened the hearing.

Chairman Nelson stated there was one remaining item to affirm, reverse or deny on the reduced setbacks on the north and east.

Patterson moved to affirm the DRB decision for reduced setbacks on the north and east. Von Gundlach seconded the motion.

There was discussion by BOA members Patterson and Nelson.

Chairman Nelson called the question.

Motion: Move to approve the reduced setbacks on east and north **Action:** Affirm
Moved by: Patterson **Seconded by:** Von Gundlach
Vote: Motion passed (**Summary:** Yes = 5, No = 0, Abstain 0)
Yes: Mr. Nelson, Ms. Hartman, Mr. Normand, Mr. Von Gundlach, Mr. Patterson

Chairman Nelson thanked the parties for their testimony and demeanor.

Chairman Nelson adjourned the meeting.

Adjournment: The meeting adjourned at 9:10 PM