

Board of Adjustment Meeting
ZOOM Meeting Platform
Monday, March 29, 2021 at 5:30PM
City of Bisbee, 76 Erie Street, Bisbee, AZ 85603
MINUTES

Call to Order: 5:30PM

Roll Call - Board Members

	Present	Absent	Excused
Melissa Hartman, Vice Chair	X		
Dennis Nelson, Chair	X		
Michael Normand	X		
Thomas Patterson	X		
Mel Sowid	X		
Anthony Underwood	X		
Peter Von Gundlach			X
Ken Budge, Council Liaison to the Board	X		
Theresa Coleman, Staff Liaison to the Board	X		
Joe Estes, City Attorney	X		

Agenda Item 1.

318 Tombstone Canyon, AZ 85603

Appeal by Donna Burke, of the decision of the Bisbee Design Review Board on February 3, 2021 denying DRB Application 21-07 submitted in connection to the replacement of window and doors on the front and back of the upper story.

- A. Call of the Application.

Mr. Nelson, Chair of the Board of Adjustment called the application to be discussed.

- B. Summarization by City Planning staff.

Ms. Coleman noted that after taking a look at the application the Design Review Board approved a portion of the windows that were requested to be replaced. The applicant was requesting that all of the windows she requested be replaced.

- C. Presentation by the Applicant

Donna Burke, sworn in to speak by Dennis Nelson, Chair of the Board of Adjustment.

Ms. Burke spoke regarding her appeal application for the replacement of windows and doors on the front and back of the upper story. Ms. Burke also, spoke regarding the history of her building located at 318 Tombstone Canyon.

Mr. Nelson asked the board members if they had any questions.

Mr. Normand noted that he didn't see in the Design Review Board minutes where they raised objections regarding the doors that were being proposed.

Ms. Burke stated that she felt the Design Review Board made a motion and didn't talk about the doors.

Mr. Patterson asked if Ms. Burke submitted any estimates that she received from companies for the replacement of those windows and doors.

Ms. Burke stated that there was only one (1) person in town that you can ask to repair, remove and refurbish. The estimate that she received was \$2,000 per window.

D. Comments by persons in favor

Linda Santellanes, vice-chair of the Design Review Board spoke in support, she was for this because this was a life safety issue. The windows are either bolted, nailed shut or painted shut.

Linda Santellanes, sworn in to speak by Dennis Nelson, Chair of the Board of Adjustment.

Mr. Patterson commented that the note attached to the application for the Design Review Board stated only replace slider window and windows on east side and deny remaining application. By inclusion the rest of the application would include the doors. They don't have to be mentioned separately.

Mike Schmitzer, sworn in to speak by Dennis Nelson, Chair of the Board of Adjustment.

Mr. Schmitzer, member of the Planning and Zoning Commission stated that he went by the building and the two (2) front windows have been modified from their original condition. He believed that they were modified when they put in the roof structure over the balcony. In his opinion those windows would have to be totally rebuilt and not preserved, there was too much decay. He felt that they should put windows in continuous with the rest of the windows on the building.

Shawn DeCraemer, sworn in to speak by Dennis Nelson, Chair of the Board of Adjustment.

Mr. DeCraemer, Chair of the Design Review Board noted that this was a very difficult application that came before the Board. The reason it was difficult was because the Board did not have a complete materials list in order to correctly evaluate the replacement. Mr. DeCraemer was not opposed to the replacement of the windows. The Board did not have pictures, styles and/or anything for the doors or windows for what was going to go in. He was not opposed to the windows being replaced, what he was specifically asking for was that the windows be replicated on the front. The decisions that the Board makes are not personal. They are called to uphold the Design Review Board guidelines by which they govern with at every meeting that they conduct. The Design Review Board does have jurisdiction over the materials and the styles of the items that are used. What he would like to see on this application was that the two (2) front windows be replicated with wood windows and the reason for that was if you put anything else it would significantly alter the historic appearance of the building. If you look at the ones that the Design Review Board did allow on the east side they have all altered the appearance of the building significantly. It has distracted from its historic nature.

Mr. DeCraemer noted that this application before the Board of Adjustment had not even been before the Design Review Board.

Ben Lepley, sworn in to speak by Dennis Nelson, Chair of the Board of Adjustment.

Mr. Lepley agreed with what Mr. DeCraemer had said and spoke regarding the windows that were installed without approval by the Design Review Board. The Design Review Board does have jurisdiction on all exterior elements that are visible including the roof. If it was "like for like" then the staff liaison can administratively approve. This was not a like for like situation, because the applicant was asking to change styles in the initial application.

Mr. Budge, Council Liaison asked for a point of order.

E. Comments by persons opposed. City Staff may respond to the substance of the application at this time.

Joe Ward, sworn in to speak by Dennis Nelson, Chair of the Board of Adjustment.

Mr. Ward agreed with what Mr. DeCraemer had said. Mr. Ward's primary concern was about the front windows, he felt that it would take away from the historic authenticity of the property and deviate from the Secretary of Design Standards. Mr. Ward also stated that the Design Review Board does have jurisdiction over all of the exterior elements whether they are in front or back. Mr. Ward stated that there were doors on the front and back for egress, so the windows especially in the front are not necessary for egress.

F. Rebuttal by the Applicant

Ms. Burke spoke regarding the plans from Brian Hope, she wouldn't have paid \$1,200 to make some pretty pictures for a Board that should be able to visualize. She did spend it because she didn't have any other option. She acknowledged that she didn't know what was supposed to go before the Design Review Board, but it was not okay for a Board to dictate how to spend her money.

G. Closure of the comments from the public

H. Discussion of the Appeal Application among the Board members.

Mr. Normand commented that he reviewed the material in the agenda packet, from a practical standpoint (he realizes that the Design Review Board did have the drawings from Mr. Hope). Mr. Normand found Mr. Hope's memo to be a compelling argument in favor of replacing the windows as Ms. Burke has proposed.

Mr. Nelson noted that in the packet there were letters from neighbor's who are not opposed to the application. He also noted that if the Board was to grant the application that the deviation from the code would be minimal or not of substantial impact.

I. Call for motion and decision by the Board.

MOTION: Mr. Normand moved that they approve Donna Burke's application to replace the windows and doors as outlined in the information provided in the packet and the HOPE CGI rendering and memo.

SECOND: Ms. Hartman

MOTION PASSED: UNANIMOUSLY

Agenda Item 2.

202 Brewery Avenue, AZ 85603

Request by Mariann Kirch for a variance to the City of Bisbee Zoning Code 5.32(D)(2) pertaining to the Special Provisions for the Historic District –Division of Building Lots and Minimum Lot Size. "The minimum lot size for any lawfully authorized and newly created building site, resulting from a split of another existing lot or parcel, within the District shall be not less than four thousand (4,000) square feet".

A. Call of the Application.

Mr. Nelson, Chair of the Board of Adjustment called the application to be discussed.

B. Summarization by City Planning staff.

Mr. Ward stated that Ms. Kirch was asking for a variance from the City's Zoning Code which shall not create lots less than four thousand (4,000) square feet within the historic district.

C. Presentation by the Applicant

Mariann Kirch, sworn in to speak by Dennis Nelson, Chair of the Board of Adjustment.

Ms. Kirch spoke regarding her application for a variance to the City of Bisbee Zoning Code pertaining to the Special provisions for the Historic District- Division of Building Lots and Minimum Lot Size for the property located at 202 Brewery Avenue.

Mr. Nelson asked the board members if they had any questions.

Mr. Normand wanted to make sure he understood if it was dividing the property into four (4) parcels or was it just dividing the parcel with the two (2) houses in the two separate parcels.

Ms. Kirch stated that it was the parcel with the two (2) houses in it. She went into detail with what she was wanting to do. Lot 4 would be less than 4,000 square feet.

Mr. Normand commented that there was a current. non-conforming use with the two (2) houses on a single parcel. Creating a parcel that doesn't meet the 4,000 square feet minimum would also be a non-conforming use.

Mr. Patterson was unclear of what was being requested.

D. Comments by persons in favor

Mr. DeCraemer was reminded by Mr. Nelson that he was still under oath, even though this was a different item.

Mr. DeCraemer stated that he was in favor. He gave the applicant, Ms. Kirch help with explaining the landscape of the property.

Mr. Normand appreciated the explanation from Mr. DeCraemer.

Mr. Lepley was reminded by Mr. Nelson that he was still under oath.

Mr. Lepley noted that he had walked the lots; his assumption was that previously there were houses on these various areas of the lot. He supported this variance application.

E. Comments by persons opposed. City Staff may respond to the substance of the application at this time.

Mr. Schmitzer was reminded by Mr. Nelson that he was still under oath.

Mr. Schmitzer, member of the Planning and Zoning Commission asked why it was going before the Board of Adjustment instead of the Planning and Zoning Commission.

Ms. Estes, City Attorney stated that an application for a variance would have to go before the Board of Adjustment not to the Planning and Zoning per state statute. A.R.S. 9-462.06 establishing the Board of Adjustment.

Mr. Schmitzer said the original parcel here including the egress easements only totals out to be just about 16,000 square feet. If you deduct the easements and the right-of-ways you would be under 16,000 square feet for this parcel and you could not divide it into four (4) parcels. The way it was written up they are grossly under sizing parcel four (4). Mr. Schmitzer noted that most of Brewery Avenue was a single loaded street; there was not front and back.

Hugh Starks, sworn in to speak by Dennis Nelson, Chair of the Board of Adjustment.

Mr. Starks stated he wasn't clear on the proposed split, he had no problem with the two (2) existing houses on that property, splitting them into two (2), but he was opposed to a third (3rd) building on that property. He didn't understand how the City could approve multi-family housing in an R-1 district. He also didn't want to see additional parking on the street.

Mr. Ward responded to the substance of the application, the focus should be that this was about a variance for one (1) piece of property. This was not for permission to divide the property into four (4) parcels, and not for permission to have parking. What the applicant was proposing was not multi-family. These would be separate lots and it would all be single family dwellings.

F. Rebuttal by the Applicant

Ms. Kirch reiterated that this was for single family homes and to have parking for them off of the street.

G. Closure of the comments from the public

H. Discussion of the Variance Application among the Board members.

Mr. Patterson stated that he was still not clear on what was actually being done here.

Ms. Kirch said that what was being proposed was basically for one (1) of the parcels to be divided into three (3) and number four (4) and that will make parcel four (4) be under the 4,000 square feet. This was what she was asking for; with that being under 4,000 square feet was giving her access for a drive to come up. It would make building on parcel two (2) available. There was a big wall (rock), so it was conducive to parking (extra parking for any of the houses). She was asking for a variance for the peice that would be under 4,000 square feet.

Mr. Patterson said that he couldn't see granting a variance that would make a property non-compliant.

Mr. Normand stated that he understood the confusion, but as Mr. Ward stated the focus of the Board was that basically the plat isn't in question. The other three lots meet the zoning requirements and the current situation was a non-conforming use as the two (2) houses are on the same parcel. Ms. Kirch was asking for a variance so they could draw a lot line between those two (2) houses. He thought that there was no other practical solution and that the variance would basically be an allowance (recognition) that it doesn't meet the minimum. Because of the circumstances that can't be changed this was the best practical approach. He would vote in favor of this.

Mr. Nelson stated that he agreed with Mr. Schmitzer that this was a matter that should really go before the Planning and Zoning, before it came to the Board of Adjustment but the way the ordinance was written that was not how it was. He suggested that the City look at the ordinance for the process.

Mr. Patterson stated that it was state law.

Mr. Estes didn't think the question here was the procedure it was whether or not the application meets the requirements for granting the variance. The stated purpose of the variance was to be able to, because of special circumstances/ conditions applying to the land/ building, use that variance to what the current zoning code provides for. This was the purpose of the variance, that there were special circumstances that was not self-imposed by the property owner, the variance was necessary for the preservation and enjoyment of the property rights, and it will not materially be detrimental for the persons residing or working in the vicinity or adjacent properties. There seemed to be some possible confusion as to the application just from the information. He shared the google map of the area to the Board to show the them a picture of the properties and the street view of the properties.

Mr. Patterson asked if those houses were on single property, then by putting this variance in they would give them the ability to sell one of the houses off.

Mr. Estes stated that was correct.

Mr. Estes showed the Board the properties from google maps. He showed the Board the house that would be less than 4,000 square feet.

Mr. Patterson asked about setbacks.

Ms. Kirch stated that she gave a five (5) foot setback when they drew up the plans, she didn't know what the setbacks were between the houses.

Mr. Estes said that, according to the survey, that the setbacks would be sufficient.

Mr. Normand said that, from Mr. Ward's memo, all the setbacks were adequate. The only variance in questions was the square footage of the lot. The setbacks meet the requirements.

Mr. Nelson spoke regarding the charrette that was done several years ago that Mr. Ward referenced in his memo.

I. Call for motion and decision by the Board.

MOTION: Ms. Hartman moved to approve the application for the variance.

SECOND: Mr. Normand

MOTION PASSED: 5/1 (Patterson)

Mr. Nelson, Chair ruled that the motion passes.

Mr. Nelson thanked them all for their patience with this medium for the meeting tonight.

Mr. Nelson moved to adjourn.

Adjournment: 7:13PM