



MINUTES BOARD OF ZONING APPEALS

7651 E. Central Park Ave, Bel Aire, KS
April 9, 2026, 6:30 PM



I. **Call to Order** Chairman Phillip Jordan called the meeting to order.

II. **Roll Call**

Chairman Phillip Jordan, Vice-Chairman Deryk Faber and Board Members Dee Roths, Paul Matzek, Brian Mackey and John Sutherland were present in person.

Also present in person were Paula Downs, Secretary and Maria Schrock, City Attorney.

III. **IV. Consent Agenda**

A. **Approval of Minutes from Previous Meeting.**

Action: No previous meeting minutes to approve

V. **Announcements: No announcements**

VI. **Board of Zoning Appeals Business**

A. **VAR-26-01- Chapel Landing Addition- Consideration of Variance for Side Yard Setback Encroachment.**

Before proceeding with the hearing, the Chairman asked if anyone on the Board intended to disqualify themselves from participating in this case, because they or a relative own property in the area of notification or have conflicts of interest. The Chairman confirmed for the record that Board Member Sutherland disqualified himself and temporarily disassociated himself from the Board, for this specific agenda item. No other Board Members disqualified themselves. The Chairman declared a quorum of five (5) Board Members present for the public hearing.

Chairman Jordan stated that official notice for this hearing was published in the official city newspaper, which is the City of Bel Aire Municipal Website, on March 19, 2026. Notices were mailed to the applicant and real property owners of record in the area of notification on March 18, 2026. The Chairman confirmed for the record that at least 20 days had elapsed between the publication and mailing dates and today's hearing date. There was no evidence to the contrary from anyone present, and the Chairman declared that proper notification had been given.

Chairman Jordan asked if anyone on the Board received any ex parte verbal or written communications prior to this agenda item. The Chairman confirmed for the record that no one had ex parte communications prior to the agenda item.

Chairman Jordan called on City staff to provide the Board with a report on this case.

The Secretary stated that the variance case was filed to address the east facing window wells on both properties that are encroaching into the side yard setback area which contradicts the requirements set out on the final plat. The final plat requires a 6' side yard setback for the primary structure only and no ground level encroachments are allowed in the setback, including, but not limited to window wells. Concerns about the window well encroachments were shared with the City on or about October 27, 2025. At that time, the homes were in various stages of construction and inspections. Based on the status of the home construction, it was determined that the City would not require that the approved work be torn out and reconstructed with the appropriate window well placements. The City requested the owner to file a variance case. Secretary referenced the five (5) mandatory findings in the staff report and highlighted staff responses for each finding. The Secretary stated that the request for the encroachment variance is due to an unintentional mistake and not a deliberate effort to avoid compliance. Granting the variance would allow reasonable use of the property without undermining the intent or purpose of the zoning regulations. Based on the findings listed in the staff report, staff recommended approval of the variance pending the outcome of the Board of Zoning Appeals review and public hearing.

Chairman Jordan called upon the applicant to make his/her presentation on the request and any response to the City staff report. The applicant was not present to provide any comments.

Chairman Jordan asked if there were any public comments and invited the public to come to the podium and provide their name and address. Chairman asked that comments be limited to five minutes.

John Sutherland, 5100 Prairie Ct. N., Bel Aire, addressed the Board. Mr. Sutherland did not believe that the encroachment was an unintentional mistake and believed that the contractor should be held accountable for the encroachment. Mr. Sutherland stated that the ICC Fire Code (International Commercial Code) requires a 36" egress clearance from the end of the window well to the property line. He was worried about the ability for someone to exit out of the window well safely and for emergency providers to assist in egress of the home if needed. Mr. Sutherland stated that he measured from the window well to the property and there is not a 36" clearance as required. Mr. Sutherland stated that he had pictures of those measurements and the window well encroached 44" into the 6' setback- this leaves only 28" instead of 36". Mr. Sutherland offered a solution that the owner should pour a concrete path between the end of the egress window to the property line for safety. In addition to the window well encroachment he also stated that HVAC equipment also encroached into the setback area and were located further north of the egress windows.

The Board discussed concerns about safety of the homeowner and their ability to egress from the windows. Board Member Faber suggested that the Board may need to be provided with the fire code information to confirm the requirements. The Secretary did state that the ICC

Fire Code was related to commercial properties and that the fire department does not review residential properties for fire code compliance. The Secretary stated that she could provide the Board with additional information if needed.

The Board discussed the concrete solution presented by Mr. Sutherland and stated that the area between the end of the window well and the property line was grass and concrete would not make the area any safer.

Mr. Sutherland's time expired.

Chairman Jordan asked if City staff received any written communications. Secretary confirmed that City staff had not received any written communications.

Chairman Jordan confirmed that the applicant was not present for final comments.

Hearing no further comments, Chairman Jordan closed the public portion of the hearing and stated that there would be no further public comments unless the Board wished to ask questions to clarify information.

Chairman Jordan invited the Board to deliberate the request to determine whether the evidence presented supports the conclusions of the required findings of fact. The Chairman directed the Board to consider the criteria provided for evaluation. The criteria for evaluation are contained in the staff report.

Having considered the criteria provided for evaluation, Chairman Jordan reminded the Board that a proper motion should reflect the factors on which it is based and, if approval is recommended, then consideration should be given to any conditions that might be attached.

The Board agreed that the case met the mandatory finding of facts.

Chairman Jordan asked if there is a motion to either recommend approval, approval with modifications, disapproval, or to table the discussion. The Chairman reminded the Board that the options on listed on the agenda to assist with the format of the motion.

Motion: Board Member Roths stated having considered the evidence at the hearing and the factors to evaluate the application, she moved that the variance in VAR-26-01 be granted based on findings and Board's discussion, as recorded in the minutes of this public hearing, and authorize the Chairperson to sign a resolution granting a side yard setback encroachment. Chairman Jordan seconded the motion. ***Motion carried 5-0.***

Chairman Jordan stated that a Resolution will be prepared and made available to the applicant as soon as reasonably possible but no later than 45 days from the date of this hearing. If anyone is aggrieved by this decision, a further appeal can be made to the District Court to determine its reasonableness within (30) days after the Resolution is signed and filed with the Zoning Administrator.

VII. Approval of the Next Board of Zoning Appeals Meeting Date.

Motion: Board Member Mackey moved to approve the date of the next meeting: May 14, 2026, at 6:30 p.m. Board Member Roths seconded the motion. ***Motion carried 5-0.***

VIII. Current Events

- A. **Upcoming Agenda Items:**
 - a. No known agenda items

IX. Adjournment

Motion: Chairman Jordan moved to adjourn. Board Member Roths seconded the motion. ***Motion carried 5-0.***

DRAFT