



# BOARD OF ADJUSTMENT COMMUNICATION

**DATE** September 20, 2023

**FROM:** Thad Chambers, Town Administrator

**AGENDA ITEM:** Public hearing to consider a variance to regulations found in Bartonville Zoning Ordinance Section 19.3.D. The variance request is to permit the applicant's residential use of an existing dwelling while a new home is constructed on the same property. The property subject to the variance request is located at 496 McMakin Road in the Town of Bartonville, Denton County, Texas. The Town of Bartonville file number for this application is VAR-2023-002.

**Applicant:** James Kennemer

**Zoning:** Agriculture (A)

**Requested Variance:** To permit the applicant's residential use of an existing dwelling, which will ultimately serve as an accessory dwelling, while a new home is constructed on the same property, found in Bartonville Zoning Ordinance Section 19.3.D.

**Summary:** The applicant has submitted a variance request (Exhibit 1) to permit their residential use of an existing dwelling while a new home is constructed on the same property. Bartonville Zoning Ordinance (BZO) Section 19.3.D states that "At no time shall an owner occupy an accessory dwelling while the primary structure is being constructed. An accessory building may be constructed at the same time as the primary structure, however, a certificate of occupancy for an accessory dwelling will be issued only after a certificate of occupancy has been issued on the primary structure." With the construction of a new single-family home on the property to serve as a primary structure, the existing single-family home would be considered an accessory dwelling.

The applicant indicates that the existing single-family dwelling will be removed once the new home is constructed and occupied. The applicant has made the variance request to minimize disruption to their lifestyle while the new residence is under construction.

**Criteria for Approval:** In deciding the variance petition, the Board of Adjustments shall apply the following criteria:

- a) There are special circumstances or conditions arising from the physical surroundings, shape, topography or other feature affecting the land subject to the variance petition, such that the strict application of the provisions of this Zoning Ordinance to the development application would create an unnecessary hardship or inequity upon or for the petitioner, as distinguished from a mere inconvenience, in developing the land or deprive the petitioner of the reasonable and beneficial use of the land;
- b) The circumstances causing the hardship do not similarly affect all or most properties in the vicinity of the petitioner's land;
- c) The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner;

- d) Granting the variance petition will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;
- e) Granting the variance petition will not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this Ordinance, or adversely affect the rights of owners or residents of surrounding property;
- f) Granting the variance petition is consistent with any special criteria applicable to varying particular standards;
- g) The hardship or inequity suffered by petitioner is not self-induced;
- h) The request for a variance is not based exclusively upon a desire from the petitioner for increased financial gain from the property, or to reduce an existing financial hardship; and
- i) The degree of variance requested is the minimum amount necessary to meet the needs of petitioner and to satisfy the standards in this section.

**If Approved:** Approval of the variance request would permit the applicant to live in their existing single-family residence located at 496 McMakin Road while a new single-family residence is under construction. Should this variance be approved, staff recommend assigning a reasonable but definite time line for the removal of the existing residential dwelling following issuance of a certificate of occupancy on the new home.

**If Denied:** Denial of the variance request would mean that the applicant would have to move off the property while the new residence is under construction.

**Exhibits:**

1. Variance Application VAR-2023-002
2. Location Map
3. Notification Letter and Addresses
4. Publication Affidavit