

CITY OF HASTINGS, NEBRASKA
MINUTES OF THE BOARD OF
ADJUSTMENT
TUESDAY, MAY 7, 2026

Pursuant to due call and notice thereof, a meeting of the Hastings Board of Adjustment was conducted at the Hastings Municipal Airport, 3300 W 12th Street, Hastings, Nebraska, May 7, 2026

Chair Dan Schwartzkopf called the meeting to order at 4:00 p.m. in Regular Session. The following members were present: Byron Jorgenson, Dan Schwartzkopf, Nic Dowling, Shawn Hartmann, and Butch Eley.

The following City Officials were present: City Attorney, Jesse Oswald, Director of Development Services, Director of IT, Erik Nielsen, Kevin Kubo, Chief Building Inspector, Danny Graves, City Planner, Ember Batelaan, and Assistant City Clerk, Lori Vorderstrasse.

Chair Schwartzkopf led the Board in reciting the Pledge of Allegiance to the United States of America.

Chair Schwartzkopf called for a motion to adopt the current agenda for the May 7, 2026, meeting. Moved by Hartmann, seconded by Eley, to adopt the current agenda. Voice Roll Call: Ayes: Dan Schwartzkopf, Byron Jorgensen, Butch Eley, Nic Dowling, and Shawn Hartmann. Nays: None. Motion carried 5-0

Citizen Communications: Chuck Rosenberg-Representing the Planning and Zoning Commission.

Public Notice – Official Notice of the Regular Meeting was published in accordance with Nebraska Revised Statute Section 84-1411. Pursuant to Nebraska Revised Statutes Section 84-1412, the public is advised that a copy of today’s agenda and all reproducible written material, which will be discussed at today’s meeting, is available for public review. Additionally, a current copy of the Nebraska Open Meetings Act is posted and accessible to the public. Neb. Rev. Statute 84.1411 (1bn).

Approval of Minutes

Meeting of February 5, 2026

Chair Dan Schwartzkopf called for a motion to approve the minutes of February 5, 2026. Moved by Shawn Hartmann, seconded by Nic Dowling. Voice Roll Call: Dan Schwartzkopf, Byron Jorgensen, Butch Eley, Nic Dowling, and Shawn Hartmann. Motion carried 5-0.

Special Order of Business

Chair Schwartzkopf appreciated Kubo holding this meeting, especially with Butch Eley recently joining the Board, and helping him learn how to run meetings. Kubo explained that this was a work session to educate the Board on what the findings

and facts are when a case comes before the Board of Adjustment. What they look for with the facts, what they can find as an undue hardship, before the applicant comes before this Board. We are referencing the State Statutes in this session to help guide them. We will have a short presentation, and afterwards, welcome your questions. Chair Schwartzkopf was looking forward to the education, as were the others.

Unfinished Business: None.

Reports

Committee Reports: None

Chair's Report: None

Staff Report: Kubo referenced State Statute 19.910 Board of Adjustments.

1. That is either the placement or the application of all building and zoning codes that go along with that.
2. To hear and decide in accordance with the provisions of any zoning regulation, a request for interpretation of any map. The City of Hastings has zoning maps available online at Cityofhastings.org. When by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of enactment of the zoning regulations, or by reason of exceptional topographic conditions, or other extraordinary and exceptional situation, or condition, of such piece of property, the strict application of any enforcement, regulation, would result in peculiar and exceptionable practical difficulties to or exceptional undue hardships upon the owner of such property to authorize upon an appeal related to the property. A Variance from such strict application to relieve such difficulties or hardship. The State Statutes basically lay out the reasons this board is hearing the application, and what you must do to find in your fact, either for or against that hardship.

Eley asked if they found in favor of the variance, does someone go back and look at that zoning code, or if we have that, why are they making a variance, if the Board doesn't go back and change it?

Batelaan let them know she would go more in-depth, as to when someone can receive a variance in the next slide, and the four things to look at. Jorgensen's question was what was meant by the soundness of structure?

Kubo replied that when someone erects a structure and doesn't follow building codes, and it's in imminent danger of collapse or endangerment of life, then the soundness of that structure is in question.

Batelaan said in terms of that Variance, that last power on the previous slide, in State Statute 19.910, it states, "no such Variance shall be authorized by the Board of Adjustment unless it finds that each of those next four items would need to be found for a Variance, for the Board to be able to approve it.

- 1 The strict application of regulations would produce undue hardship.

2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
3. The authorization of such Variance, which will not be of substantial detriment to adjacent property, and the character of the district will not be changed by the granting of the variance.
4. Granting such variance is by reason of demonstrable and exceptional hardship, as distinguished from variations for purposes of convenience, profit, or Caprice.

Oswald pointed out a couple of things on this slide. He emphasized that all four criteria must be satisfied in order for the variance to be granted. It's not just one or three; all four items must be met. He emphasized the last line of number four by re-reading number four again. That line is a very important thing to be thinking about, because it's a high burden to meet, to overrule something. Oswald answered Butch's question from earlier. When asking for a variance, it's for a very specific piece of property, or a couple of lots, something like that. Not saying the whole zoning area has an issue, it's more that someone said their piece of property has a hardship that is greater than anybody else's in the surrounding area.

Batelaan mentioned that, often, the hardship had to do with floodplains, so if their specific property had a large portion in a floodplain and their front setbacks were currently 25 feet. If their rear yard was mainly in the flood plain, and the only location they can build is farther forward on their lot, that would only be a 10-foot setback; they would be able to come to the Board for a Variance, asking to have a 10-foot setback instead of 25 feet, because they physically cannot build farther back on their properties. Another example would be if there were topographical changes, like a very steep slope on their property, but we are looking at these individual properties, and that's the exceptional hardship. Batelaan provided two more slides with case law from other communities and the Board's votes in those cases.

Butch inquired, when Development Services looks at these, do you realize these, and recommend these Variances?

Batelaan responded that when they receive a Variance, they write a staff report, review each of these four criteria, and provide a recommendation regarding whether the variance meets those requirements. Then they recommend approval or denial. When they take it to the Board, the Board can either agree with the determinations made in the Staff Report and base its findings and decision on that. If they disagree with what the staff has put in the staff report, they can make their own findings of fact, based on those four state statutes.

Butch asked if they agree with the Variance, does it then go to Planning and Zoning?

Batelaan stated the Board of Adjustment is the final decision-maker.

Eley stated that it then goes to Planning and Zoning before they receive it.

Batelaan clarified that a Variance doesn't go to Planning and Zoning. The person applies for a Variance based on hardship. There is no Planning Commission or City Council for the Variances.

Shannon Hoffmann asked how many terms Eley served as a Council Member.

Eley replied two terms. Hoffmann inquired, then no one took the time to teach this in those two terms?

Eley said that's why he asked the questions.

Hoffmann stated this is the reason for the training, so we don't keep moving blindly forward. He thought that was amazing and thanked the Planning Department for doing this work session, as education is important.

Kubo offered to meet quarterly if the Board approved. We can meet more. We are happy to educate, so you can ask those questions. If you have something you aren't sure about, our office is always open, or we can schedule a meeting and have an educational session. There are a lot of things we don't know.

Eley asked if, if they grant a Variance, could someone overrule the Variance?

Kubo replied yes, they can. Jesse Oswald jumped in and said it would go to District Court. Eley was surprised that the City Council couldn't change it. Kubo said it must go to the District Court as an appeal for a judgment or decision. It can be appealed to the District Court. Eley stated this is the only Board that doesn't go to Council for a decision.

Chair Schwartzkopf added personal comments, thanking Jesse for mentioning the four pieces of State Statute where all four criteria must be met. That was educational.

Chair Schwartzkopf has only been a part of three Variance requests, so it's been a big learning experience. Looking back at those coming before the Board, it wasn't easy to make a decision, and meeting all four items as noted. Trying to be friendly to the citizens who are trying to do a development, or make a change, but we have a department that's done its work and made a recommendation, and it's really based upon State Statutes. Kubo also mentioned that it is in the Municipal Code, too. Chair Schwartzkopf pointed out going against State Statutes, not saying Batelaan's example wasn't a good one, but for him, it could be a tough call. He appreciated the education and the Board. This is not always an easy decision.

Jesse Oswald added one clarification for Batelaan, regarding the setback example being due to the floodplain. Initially, Development Services would most likely deny that, because it doesn't technically need it. They would tell the person no, but they could take it to the Board for a Variance; the staff would most likely recommend the Variance be granted. Oswald asked the Development Department if there would be a chance for a recommendation to the Board to approve the Variance.

Batelaan said in that case, the applicant would have gone to the building official, who would have denied them a building permit for the property, due to the setback requirements; they couldn't build. The inspector would recommend they go to the Board of Adjustment for a Variance. That application would then be submitted to Planning and Zoning. It gets reviewed by Kubo or Batelaan, who look at those four State Statutes and would likely recommend approval in that

case, because of the undue hardship of the floodplain. Then take it to the Board of Adjustment to have their determination. If the Board of Adjustment decided to approve the Variance, we would then attach that decision to the building permit when they reapply. Kubo explained that when the Board approves it, it gets attached to the permit in our permitting system. If there is anything in the future, we reference that case; this is what was done, and how it was followed to the letter of the law. The decision was based on the findings of fact. This law created an undue hardship that no one else had in that neighborhood. We followed the letter of the law, and that's the proof we did it. It helps them and the Board for future reference when making those decisions.

Chair Schwartzkopf asked Batelaan if there were any kinds of statistics, from within the State of Nebraska, of how many times a Variance is brought to the Board of Adjustments, and the Variance is granted?

Batelaan stated that typically, it's not very often. After checking with Kearney and Grand Island, Kearney only had one Variance a year, if any. Generally, there are not a lot of Variance applications, since they must meet all four criteria. Even if they do have one, it may not get approved. It's usually a rare occurrence. Hartmann stated it's because they do such a great job in the first place. Batelaan stated that ideally, if we don't have Variances for when needed. Then we don't need to go to the Board of Adjustment.

Jorgensen said for the past Variances that they granted, how many of those would you consider were on thin ice? Kubo said we won't revisit the past. We are looking toward the future. They would have to look at each case again and look at its merits. The past is the past; decisions were made and can't be overturned. All we can do is educate and help you make the best decision you can based on the facts of the case. Eley asked if the Board grants a Variance, can a neighbor take it to district court because they don't like that Variance? Kubo didn't think there was much Case Law for that. Oswald said neighbors would have to have standing to bring that action, and they were not the ones requesting the Variance. He would have to search for some more examples but could see an occasion for that to happen. Kubo has never seen a case law for that example.

Kubo gave the first example of *Barrett vs. the City of Bellevue*:

1. The applicants applied for a Variance for the height and setback of a fence, where the requirements were limited to forty inches in height and a setback of fifty feet. The applicant requested an eighty-inch height and a twenty-four-foot setback. The Board of Adjustment's decision refused to grant the Variance. The Court decision affirmed the Board of Adjustment's decision. The Appellate Court found there was undue hardship due to the elevation difference but affirmed the District Court decision. Kubo pointed out that the District Court didn't question the decision; the Appellate Court found there was a hardship, but it wasn't proven in the Board of Adjustment case. They just denied the Variance request. The Appellate Court can't judge on the hardship. All they are allowed to judge is the decision being made by the District Court. The Appellate Court only looked at the decision of the District Court.

Batelaan reaffirmed that when it goes to court, they are not looking to overturn your decision; they look at whether the Board followed State Statutes. If the State Statutes are followed, the court generally affirms the decision made. The District Court found this Variance would not create a substantial detriment to adjacent

properties but affirmed the Board's decision. The District Court may disturb that Board's decision only if the decision was illegal or not supported by evidence, or a finding of fact. Thus, the reason we keep emphasizing the finding of facts. Evidence needs to be presented that there is an undue or exceptional hardship for the applicant in what he was trying to accomplish.

Oswald reminded the Board, that it would be important in the case they are reviewing, to go through those four distinct items and have the Board discuss each of those and support. If you are going to find that there is a Variance needed, you need to walk through each of those four items and point out the specific facts as to why there is an undue hardship and what are the specific facts for the hardship. The hardship is not shared generally by other properties in the same zoning as this one; therefore, it is topographical reasons, flood plain reasons, and the authorization of the Variance will not be of substantial detriment to adjacent properties, and the character of the district will not change by granting the Variance, and the granting of such a Variance is based upon a reason of demonstrable exceptional hardship. Apply facts to each of the four items, so it is clear on the record for the District Court to look at, and if not, they would likely overrule the Board.

Kubo added that when submitting applications, we do as much finding of facts as we can, based on the situation, to present to the Board the facts of the case.

Chair Schwartzkopf said in theory, by the time the Department has done the work, and the case gets to the Board, there shouldn't be much for us to think about. Kubo said sometimes, and sometimes not, depending on the case.

Chair Schwartzkopf was thinking back to the previous cases brought before the Board, and for him, it was difficult to make all four pieces. Kubo said it's very difficult to make all four pieces fit together. That is why the Board makes the decision based on the facts heard and seen in the presentation, or the applicant brings their facts, you listen, then weigh all of that, and then go back to those four State Statutes. Do those facts meet those four requirements? If they do, vote to grant the Variance; if they don't, then they do not.

Hartmann stated that it's *that* specific for a reason. They don't want to revisit the entire discussion that took place getting to that point; they want to make sure the decision made was made legally. That speaks volumes for the entire process. You shouldn't have to redefine the word every time you bring it up. They want to know if they need to adjust those four regulations you're supposed to use to make those decisions. It's too bad that this doesn't apply to many other facets of City Operations.

Kubo mentioned that Butch brought that up, if we see a problem with our code, and mentioned the Middle School Project, and they wanted to spot zone the R-P3. That does not match what the Comp Plan or Future Land Use Map says. Our recommendation to the Planning Commission was to deny it, because it was not in compliance with those. The Planning Commission voted to deny that application. Then the Planning and Zoning went back and reviewed the reason it was denied and investigated all the zoning for the C-2 District. In reviewing, it used to allow residential. That changed in 2015. Looking at the reason, do we want a first-floor residential area along First and Second Street? That answer is no, so how do we meet in the middle? Let's meet in the middle with a Conditional Use Permit; that way, we can analyze the case. If it's going in next to the

structures that have already existed, as first-floor residential, that's not going to impact or change the character of that neighborhood. We adjusted our zoning laws to allow for a Conditional Use Permit after a discussion, whether it's warranted or not. The Planning Commission makes that decision. Then the City Council makes that decision.

Jorgensen directed a question to Kubo, asking if it would be safe to say that a Conditional Use Permit is the flexibility that is built into a zoning regulation to allow some control for what will go on that lot. The Board can still say yes or no to the project.

Kubo said it's a flexible tool we can use in certain situations to allow those uses to be compatible in certain portions of the district, not in the whole district. However, it's not detrimental to the districts. The department is trying to use the Conditional Use Permit in that process. To create, if it doesn't have an impact on that district, we are making it as an allowed use through the Conditional Use Permit. We are trying to look at the big and little picture, to make sure they all align together.

Hartmann thinks that's a great tool to use because every other tool we have sets a precedent, and this doesn't. That allows us to see if that tool works; it's not a permit or conditional.

Kubo looked at other communities in their research that had first-floor residential, and some had it, and some did not. Some have requested a Conditional Use Permit. What's best for Hastings? In this situation, the Middle School is a redevelopment project in a school. It's never going to be used for anything else. There are already first-floor residential units across the street, so there would be no impact. It's not going to change anything there. Yet we are going to allow a 68-Unit Development to occur, because we changed a few words in our Zoning Code. We made a great impact by looking to the future, looking to our Comp Plan, looking to our Future Land Use Map, to make sure all of that aligns together. We did that as a team. Doing research, looking at other communities, and at the State Law. Then adjust our Municipal Code to work for us.

Batelaan pointed out that the Conditional Use Permit, while it does allow flexibility, the key word is Conditional. Oftentimes, the reason it goes to the Planning Commission and City Council is that if it were a permitted use, it would likely not work in the district. The Condition is either a Condition on the timing of a project or fencing and screening requirements from adjacent properties. That's why it goes to the City Council. The downside for the Developer would be if it needs to go to the Planning Commission and the City Council, that's extra time for them. Their project now takes more time rather than just being a permitted use in the district. There are pros and cons to each of these avenues for Developers to go through, and a Variance is just another one. If it's specific to their property, and what they want to build doesn't work on their property, due to an undue hardship, that's when they come to you for a Variance.

Batelaan moved forward with another example, the City of Battle Creek vs. the Madison County Board of Adjustment.

2. Madison County acts as the Board of Adjustment since Battle Creek is a small city, and in this example, the applicants applied for a Variance to the setback requirements on their property in order to build a garage. Batelaan showed an image of a gravel road on two sides of their property, and a paved street on one side. According to their zoning regulations,

which created three front setbacks, each needing to be a twenty-foot setback. The Board of Adjustment granted that Variance; however, when it went to District Court, the granting of that Variance was reversed, and in summary, the Board found that the zoning would produce a hardship but did not decide whether that hardship was an undue hardship. The Board did not find that it was an exceptional detriment to that property, another one of those findings that they did not discuss, and the Board did not find out whether the granting of the Variance was based on demonstrable and exceptional hardship as opposed to the purpose of convenience, profit, or caprice. The Board only stated that it would be a hardship and did not address whether it was convenience, profit, or caprice. Therefore, when it went to the District Court, the court reversed its decision because it did not meet each of those four criteria in the State Statutes.

Butch Eley inquired what the difference is between hardship and undue hardship. Hartmann said the definition was what ultimately cost them this case. Kubo pointed out the importance of the applicant's testimony, and the Board of Adjustment is very important in deciding those. Hartmann thinks the Board should rely on the Planning and Zoning department to tutor them and guide them, so it won't need to be reviewed in the future. The answer to that question was that they didn't define it. Hartmann made a scenario where it was due to the cost, and they could have found in favor; however, Batelaan pointed out that it would still be a hardship due to profit, or caprice, and could not be found as a hardship, being based on profit. Hartmann asked why the court reviewed it after the initial decision was made. Batelaan inquired if Hartmann meant how it ended up going to court, and that is what he was asking. The Board of Adjustment of Madison County made the decision. The city was the one who took it to court, because they did not agree with the Board of Adjustment's decision. Hartmann stated what are they supposed to do, build on top of the house? Oswald offered that the Mayor, in this case, provided testimony where he did not want it built. The Mayor felt it would impair future development. Hartmann thought it sounded personal.

Oswald gave reasons it wouldn't be allowed, simply because someone wants to build a garage, and it would not meet the fourth requirement. It's a convenience, having a garage. It's meant for the property and the setbacks, and it's an unbuildable lot. Not because you would like to have a garage, or may want a 2500 square-foot house, instead of a 2000 square-foot house, which would not meet the fourth criterion. An unbuildable lot that can't have anything built on it would be the reason for the Variance. The applicants and the City would be the only ones able to appeal the decision.

Kubo let the Board know that Planning and Zoning have worked very hard for the past four years to do a better job with flexibility and with the codes adopted by the City Council. Trying to find a happy medium. Kubo explained the findings of facts and the State Statutes as the reason they need to understand them, to help in their decision-making.

Chair Schwartzkopf assumed that anyone making an application for a Variance needs those four criteria explained to them. Kubo let the Board know that the citizens were told the reason they were denied for their application. It's explained to them and gives them the right to apply for a Variance. Batelaan agreed they would point that out ahead of time, those being the four items the Board must base their decision on, and if the Variance is denied, they will not get their fee back for filing, and it's approved or denied. That is usually the end of it. Chair

Schwartzkopf said if that's explained and they understand it, he sees why there would be a minimal number of Variances being filed.

Chair Schwartzkopf asked for additional comments and education and mentioned that Kubo is happy to do these more often. Kubo offered that they could choose the topics that they want the Board of Adjustment and the Staff to have good communication. Hartmann stated that with infrequent Variances, as Kubo suggested, meeting Quarterly, and having Kubo and Batelaan bring examples for the Board to review for training and help sharpen their knowledge. He wants to be good at this, due to the seriousness, if they do need to be involved. Kubo let them know they need good decisions and legal decisions, as it can have legal repercussions, so needing to be educated to make decisions to the best of their ability. Jorgenson added that it may be helpful to bring a case in that they have to work through and make a decision on. Kubo agreed, making one as a fake applicant, seeing what your process is, and then helping by asking did you meet those four criteria? Hartmann said we can fight over a fictitious case. Kubo said that would be a good thing, because they care enough to voice their opinions, and that is what we want, for everyone to speak their opinions. Batelaan and Kubo thought it was a great idea, being challenged to create something to help them process and work through a case. Chair Schwartzkopf told Butch he liked that idea and thought it would help everyone. He asked Oswald if they needed a motion to have a quarterly discussion. Oswald suggested just hearing the opinion of the Board and said there was no need for a formal action. Chair Schwartzkopf agreed, as did Hartmann and everyone else, to have a quarterly meeting.

Kubo asked for Staff Reports. Would there be anything else that the Board would like to bring in front of the Board, such as legislative changes, or doing a report for you, the same as we do for the Planning Commission?

Chair Schwartzkopf agreed that if there is something they should be aware of, meeting quarterly, that would assist with their decision-making, he would appreciate it. Kubo told the Board they have a zoning presentation they are doing public meetings for, rewriting the entire Chapter 54, if that is something you are interested in, explaining why those changes are being made, and based on those being the new rules, and get adopted by the Planning Commission and the City Council, we are happy to present those changes next time. Kubo pointed out that Rosenberg has been through one presentation, and the Sign Code will be the next presentation. Chair Schwartzkopf said he welcomed that.

Meeting adjourned by Chair Schwartzkopf at 5:03 p.m.