



Town of Nederland Board of Zoning Adjustment

AGENDA

Thursday, October 13, 2011 ~ 7:00 pm
Nederland Community Center
750 Highway 72 North

- 1) Call to Order**
- 2) Roll Call**
- 3) Approval of minutes from August 4, 2011**
- 4) Scheduled Business**
 - a. Consideration of a recommendation to amend Nederland Municipal Code Section 16-232(a)(1) to clarify variance criteria applicability.
 - b. Update on Board of Trustees' decision regarding Trustee liaison voting dynamics.
- 5) Other business**
- 6) Adjournment**



Town of Nederland Board of Zoning Adjustment

MINUTES

Thursday, August 4, 2011 ~ 7:30 pm
Nederland Community Center
750 Highway 72 North

1) Call to Order

Chairman Stringfellow called the meeting to order at 7:37 pm.

2) Roll Call

Present: Chairman Mark Stringfellow; Board Members Debbie Davenport, Mark Moll and Ken MacFerrin; Alternate Board Member Roger Cornell; Trustee Liaison Joe Gierlach

Also present: Town Administrator Alisha Reis, Deputy Clerk Kristen Edwards.

3) Approval of minutes from July 14, 2011

A change in the minutes was noted: the motion for item 4d, was made by Board Member MacFerrin rather than Board Member Moll.

A motion to approve the minutes with the above-noted modification was made by Board Member Moll, seconded by Board Member Davenport and approved unanimously by a roll call vote with Alternate Board Member Cornell abstaining.

4) Scheduled Business

- a. Consideration of a height variance request by the Town of Nederland re: installation of a solar panel array on the Community Center roof (750 Highway 72 North).

Alisha Reis, Town Administrator, introduced the item. She explained that there is an existing solar array on site that is proximate and similar to the proposed array. Both the existing and

the proposed array are approximately 9'3" in height. The roof is right at the 35-foot height limit for the Town; a three-foot projection past the limit is permitted, so a variance for at least 6'3" is needed. Per Nederland Municipal Code 16-232(b) the Board is allowed to approve variances "for the purpose of considering access to sunlight for solar energy devices."

The Board discussed the proposal and agreed that the existing array made the proposed new array significantly less controversial. It was confirmed that public notice had been sent to neighboring properties and no complaints or concerns were received. The group agreed to make the amount of the variance greater than necessary so as not to cause any issues if the total height calculations weren't exact.

A motion to grant a 9-foot height variance to the Town of Nederland re: the installation of a solar panel array on the Community Center roof (750 Highway 72 North) was made by Board Member Moll, seconded by Board Member MacFerrin and approved unanimously by a roll call vote.

5) Other business

The Board discussed the importance of finding another Board Member to fill the currently vacant seat. Given the need for a concurring vote of four members to conduct most business, the empty seat is particularly problematic on a board with five members. The group discussed the merits of making the Trustee Liaison a voting member under certain circumstances.

A motion to recommend that the Town Attorney look at the dynamics of making the Trustee Liaison act as a 'second alternate' with voting privileges and draft a memo to that effect for the Board of Trustees to consider was made by Board Member Cornell, seconded by Board Member MacFerrin and approved unanimously by a roll call vote.

6) Adjournment

A motion to adjourn was made by Board Member Moll, seconded by Board Member MacFerrin and approved unanimously by a hand vote at 7:50 p.m.

TOWN OF NEDERLAND

Mark Stringfellow, Chair

ATTEST:

Kristen Edwards, Deputy Town Clerk



AGENDA INFORMATION MEMORANDUM NEDERLAND BOARD OF ZONING ADJUSTMENT

Meeting Date: October 13, 2011

Initiated By: /s/ Alisha Reis
Dept: Planning & Zoning

AGENDA ITEM:

Consideration of a recommendation to amend Nederland Municipal Code Section 16-232(a)(1) to clarify variance criteria applicability.

SUMMARY:

Nederland Municipal Code Section 16-232(a)(1) lists five criteria for the BZA to consider when reviewing variance applications. Unfortunately, the code is unclear as to the specifics of how many of the criteria must be met in order to grant a variance. Per a request from the BZA, the Town Attorney has generated a memo analyzing the situation and proposing potential code amendments that would clarify the situation. She has also gathered samples of language from other communities for reference.

The BZA should determine which approach they feel is best, then make a recommendation to the BOT to that end.

ALTERNATIVES:

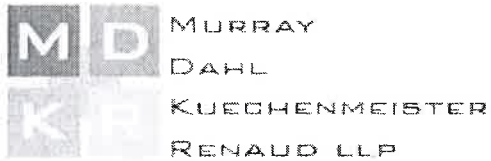
- 1) Recommend one of the language amendments drafted by the Town Attorney.
- 2) Recommend an alternative language amendment.
- 3) Recommend no change and/or request further staff research.

ATTACHMENTS:

- 1) Town Attorney's memo
- 2) Draft ordinance featuring possible code amendment language
- 3) N.M.C. Section 16-232(a)(1)
- 4) Sample variance criteria code language from other communities

FINANCIAL CONSIDERATIONS:

None



MEMORANDUM

TO: Members of the Nederland Board of Zoning Adjustment
CC: Alisha Reis, Town Administrator
Kristen Edwards, Clerk to the Board
FROM: Carmen Beery, Town Attorney
DATE: October 5, 2011
RE: Variance Criteria: Amendment Options

As the Board of Zoning Adjustment ("Board"), you are called upon to render decisions on variance applications based on those criteria set forth in the Nederland Municipal Code ("Code"). Code Section 16-232(a)(1) authorizes you to approve a variance when you find "that the following criteria, insofar as applicable, have been satisfied:

- a. That there are unique physical circumstances or conditions, such as irregularity, narrowness, shallowness or size of the lot, or exceptional topographical or other physical conditions peculiar to the affected property;
- b. That, because of such physical circumstances or conditions, the property cannot reasonably be developed in conformity with the provisions of [Chapter 16];
- c. That such unnecessary hardship has not been created by the applicant;
- d. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located nor substantially or permanently impair the appropriate use or development of the property; and
- e. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of [Chapter 16's] provisions which are in question."

In response to recent variance applications, you have raised the following questions: How does the Board determine which criteria are "applicable" to a particular application? Does this Code language require each of these five (5) criteria to be met, or just those that the Board determines apply to a particular application? How is applicability even determined?

These are legitimate questions to which the Code language above does not provide clear answers. It is always the goal (or it should be) for the Code to provide decision-makers, and the public, with clear criteria and standards upon which decisions will be made. Clear criteria not only guide the decision-making body, but they put an applicant on notice of what she must demonstrate to obtain project approval. Finally, when a decision-maker objectively applies clear criteria, the resulting decision is very difficult to overturn on appeal.

In the context of variance criteria, different communities take different approaches in their municipal codes. Some jurisdictions require that *all* of the Code criteria must be satisfied to

obtain a variance; others require that a majority of the criteria be satisfied to obtain approval. Neither approach is legally “right.” In my opinion, the main goal is clarity. Whether the Code provides that all or a lesser number of defined criteria must be met, if the requirements are clear, due process is satisfied and all interests are served.

You are being provided with examples of variance criteria provisions from other codes as well as a draft ordinance with some language options. These materials are provided as a starting point for your discussion. Please don’t hesitate to let me know if I can provide any further background information or other options as your discussions on this topic evolve.

TOWN OF NEDERLAND, COLORADO

ORDINANCE NUMBER _____

AN ORDINANCE AMENDING SECTION 16-232(a)(1) OF THE NEDERLAND MUNICIPAL CODE CONCERNING VARIANCE APPROVAL CRITERIA

WHEREAS, pursuant to C.R.S. § 31-23-307, the Board of Trustees (“Board”) of the Town of Nederland, Colorado (“Town”) possesses the authority to provide for the appointment of a Town board of adjustment; and

WHEREAS, under this authority, the Board previously adopted an ordinance creating the Town of Nederland Board of Zoning Adjustment (“BZA”) and setting forth the powers and duties of the BZA; and

WHEREAS, Nederland Municipal Code (“Code”) Section 16-232 authorizes the BZA to approve applications for variances from the strict application of the Town’s zoning requirements under certain limited circumstances; and

WHEREAS, the Board finds and determines that it is in the public interest to amend the variance approval criteria set forth in said Section 16-232 as set forth herein.

NOW THEREFORE, BE IT ORDAINED by the Board of Trustees of the Town of Nederland, Colorado, as follows:

Section 1. Section 16-232(a)(1) of the Nederland Municipal Code, concerning the power and authority of the Town Board of Zoning Adjustment to hear and decide variance applications, is hereby amended as follows:

OPTION # 1

[Make All Current Criteria Mandatory]

(1) Hear and decide applications for variances where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Chapter. The Board has the power to vary or modify the application of the regulations or provisions of this Chapter relating to the use, construction or alteration of buildings or structures, or the use of land, so that the spirit of this Chapter is observed, public safety and welfare secured and substantial justice done, provided that the Board finds that all of the following criteria, ~~insofar as applicable,~~ have been satisfied:

- a. That there are unique physical circumstances or conditions, such as irregularity, narrowness, shallowness or size of the lot, or exceptional topographical or other physical conditions peculiar to the affected property;

b. That, because of such physical circumstances or conditions, the property cannot reasonably be developed in conformity with the provisions of this Chapter;

c. That such unnecessary hardship has not been created by the applicant;

d. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located nor substantially or permanently impair the appropriate use or development of the property; and

e. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of this Chapter's provisions which are in question.

OPTION # 2

[Make a Majority of Current Criteria Mandatory – At least 3 of the 5]

(1) Hear and decide applications for variances where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Chapter. The Board has the power to vary or modify the application of the regulations or provisions of this Chapter relating to the use, construction or alteration of buildings or structures, or the use of land, so that the spirit of this Chapter is observed, public safety and welfare secured and substantial justice done, provided that the Board finds that at least three (3) of the following five (5) criteria, insofar as applicable, have been satisfied:

[insert same list of criteria]

OPTION # 3

[Make all criteria mandatory – insert new/different criteria]

OPTION # 4

[Make a majority of new/different criteria mandatory]

Section 2. Should any one or more sections or provisions of this Ordinance or of the Code provisions enacted hereby be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance or of such Code provision, the intention being that the various sections and provisions are severable.

Section 3. Any and all Ordinances or Codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such Ordinance or Code or part thereof shall not revive any other section or part of any Ordinance or Code provision heretofore repealed or superseded.

INTRODUCED, ADOPTED AND ORDERED PUBLISHED THIS ____ DAY OF
_____, 2011.

TOWN OF NEDERLAND, COLORADO

Joe Gierlach, Mayor

ATTEST:

Teresa Myers, Town Clerk

APPROVED AS TO FORM:

Carmen Beery, Town Attorney

N.M.C.

Sec. 16-232. Powers of Board.

(a) The Board shall hear and decide appeals from and review any order, requirement, decision or determination made by any administrative official charged with the enforcement of this Chapter. It shall also hear and decide all matters referred to it and the following matters as required under this Chapter:

(1) Hear and decide applications for variances where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Chapter. The Board has the power to vary or modify the application of the regulations or provisions of this Chapter relating to the use, construction or alteration of buildings or structures, or the use of land, so that the spirit of this Chapter is observed, public safety and welfare secured and substantial justice done, provided that the Board finds that the following criteria, insofar as applicable, have been satisfied:

- a. That there are unique physical circumstances or conditions, such as irregularity, narrowness, shallowness or size of the lot, or exceptional topographical or other physical conditions peculiar to the affected property;
- b. That, because of such physical circumstances or conditions, the property cannot reasonably be developed in conformity with the provisions of this Chapter;
- c. That such unnecessary hardship has not been created by the applicant;
- d. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located nor substantially or permanently impair the appropriate use or development of adjacent property; and
- e. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of this Chapter's provisions which are in question.

~~(2) Hear and decide such other matters as the Board of Trustees may by ordinance provide.~~

~~(b) Where feasible, the Board may vary or modify the application of this Chapter for the purpose of considering access to sunlight for solar energy devices.~~

~~(c) Under no circumstances shall the Board grant a variance that would have the effect of increasing the density of use than would otherwise apply to the parcel. (Ord. 209 Art. VIII §2, 1981; Ord. 435 §1, 1996; Ord. 548 §1, 2001)~~

Sec. 16-233. Procedure.

In addition to any requirements the Board may adopt by rule, the Board shall conduct hearings and make decisions in accordance with the following requirements:

(1) Applications and notices of appeal to the Board shall be submitted to the Zoning Administrator. Upon receipt of the application or notice of appeal, along with an application fee as set forth in the Town's fee schedule, the Zoning Administrator shall at once transmit to the Board all the papers constituting the basis or record upon which the application or notice of appeal was

Sec. 16-24-20. Notice of all hearings before the Board of Adjustment.

Notice of such hearing shall be published in a newspaper of general circulation within the City at least ten (10) days before the date of the hearing. The notice of publication shall contain the applicant's name, address and description of the property, nature of the request and date, time and place of such hearing. (Prior code 23-424)

Sec. 16-24-30. Variance posting.

Applicants for variances shall be responsible for posting in a conspicuous place upon the property a notice of the request for variance for a period of not less than ten (10) consecutive days prior to the hearing. The notice shall be provided by the Board of Adjustment. (Prior code 23-425)

Sec. 16-24-40. City Council appeal.

A party to an appeal before the Board of Adjustment may appeal the decision of the same to City Council subject to the following:

(1) Appeals shall be in writing on forms provided by the City Clerk.

(2) Appeals to the City Council shall be filed within ten (10) days from the date of the Board of Adjustment's decision. The City Council shall not have jurisdiction to hear any appeal not filed within the time limit stated herein.

(3) A fee of fifteen dollars (\$15.00) shall be paid for all appeals, such fee to be paid in full to the City Clerk at the time of filing an appeal.

(4) All appeals shall be decided by the City Council not later than thirty (30) days from the filing of the appeal.

(5) City Council shall notify the appellant in writing within fifteen (15) days of its decision. (Prior code 23-426)

Sec. 16-24-50. City Council review.

The City Council's review of the Board of Adjustment's decision shall be limited to a determination as to whether, from the evidence presented at the hearing before the Board of Adjustment, the decision of the same was in compliance with the purpose, intent and requirements of this Chapter. The standard of proof shall be a preponderance of the evidence. (Prior code 23-427)

Sec. 16-24-60. Variances.

(a) Variances from the requirements of this Chapter may be granted by the Board of Adjustment when the circumstances and conditions of a property are exceptional or extraordinary such that they do not apply to property generally within the City and such that denial of an application for relief from the requirements of this Chapter would result in an inability to reasonably utilize the property. In reviewing applications for variances under this Section, the burden shall be upon the applicant to meet the criteria set forth herein.

(b) The Board of Adjustment shall not approve a variance from the requirements of this Chapter unless all of the following criteria are met:

(1) The property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same zoning district;

(2) The extraordinary or exceptional physical condition of the property will not allow reasonable use of the property in its current zone in the absence of relief;



(3) The granting of the variance will not have an adverse impact on the surrounding properties, the neighborhood or the community as a whole;

(4) The granting of the variance will not be detrimental to public health, safety and welfare or injurious to surrounding property values and neighborhood character;

(5) The granting of the variance shall not be substantially inconsistent with any plans adopted by the City;

(6) The granting of the variance shall not materially weaken the general purpose of this Chapter 16 or any other zoning regulations of the City;

(7) The variance, if granted, shall only be to the extent necessary to afford a reasonable use of the property; and

(8) The unique conditions of the property under which the variance is sought were not created by the owner of the property or his or her agent.

(d) Conditions may be imposed upon any variance approval in order to alleviate or mitigate potential adverse impacts. Conditions must relate to the property and may relate to specific persons or organizations which have a direct association with the use of the property as contemplated by the requested variance. Every variance authorized hereunder shall be transferable and shall run with the land unless expired pursuant to Subsection (e) below.

(e) A variance granted pursuant to this Section shall expire within two (2) years from the date of final approval if action has not been taken within said time. This time may be extended with the approval of the Board of Adjustment if the petitioner can show good cause. For purposes of this Subsection, *action*

means obtaining a building permit or other applicable City permit/license pursuant to the granting of the variance, or if a permit or license is not required, the right that is granted pursuant to the variance is put to use.

(f) When an application for a variance from the terms of this Chapter has been denied by the Board of Adjustment, no application for the same or substantially the same variance may be filed with the Board of Adjustment for a period of one (1) year after the date the Board of Adjustment's decision denying the previous variance application becomes final. (Prior code 23-428; Ord. 07-09 §4; 2009)

ARTICLE 25

Amendments or Changes

Sec. 16-25-10. Amendments.

(a) The City Council may, from time to time, rezone any property on its own action or on petition, after public notice and hearings as are provided in Sections 16-25-40 through 16-25-80 below. An SDP application shall be submitted whenever a petition for rezoning is filed. The SDP application and rezoning petition shall each be subject to its respective review process and criteria. The City Council may, in its sole discretion, combine the public hearings to be held before it on a rezoning petition and on an SDP application concerning the same property.

(b) Whenever development plans of any area are submitted to the City Council as the basis for requesting any rezoning and the City Council grants the request, the City Council shall have the power to enforce development of said area in accordance with said plans and exclude development of any other uses that may otherwise be permitted in said area as a result of said zoning.

ZONING

180-46.E. Town Council shall approve, conditionally approve, or deny the application for rezoning.

- f) No request for a rezoning shall be reconsidered by the Planning Commission or Town Council until the expiration of six (6) months or a substantial change of circumstances shall have first occurred.
- g) Upon approval of any request for rezoning, the Community Development Department shall forthwith note the amendment of the official Zoning Map of the Town of Frisco, keep appropriate records thereof and notify the Clerk and Recorder of Summit County of said amendment of the official Zoning Map.

C. Power to authorize variances.

1. In establishing the provisions of this part, the Planning Commission hereby finds and determines that there may be exceptional or extraordinary circumstances or conditions which are applicable to properties within the Town that do not generally apply to the property, and such that denial of an application for relief would result in an inability to reasonably utilize property. Therefore, it is necessary to provide for such extraordinary relief in the form of variances. In reviewing such applications for variances, the burden shall be upon the applicant to meet the criteria set forth in this part.
2. **Non-Use Variances. Authorization.** Subject to the requirements of this part and this Zoning Code, Non-Use Variances are hereby authorized.
3. **Due diligence.** An applicant for a variance must prove that due diligence was exercised by the applicant before the condition giving rise to the request for a variance occurred. Due diligence shall require a persistent and reasonable inquiry to investigate relevant and applicable facts through both personal and professional actions required of any reasonably prudent person acting as a fiduciary exercising professional judgment and common sense. If an applicant fails to exercise due diligence in discovering, preventing or attempting to remedy a non-conforming condition the request for a variance shall be denied.
4. **Criteria for Granting a Non-Use Variance.** The variance application shall be reviewed on its own merits and Planning Commission shall not approve the variance unless all of the following criteria are met: **[Amended 12-17-96, Ord. 96-27]**
 - a) The property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same zoning district; and



ZONING

- b) That the extraordinary or exceptional physical condition of the property will not allow reasonable use of the property in its current zone in the absence of relief; and
- c) That the granting of the variance will not have an adverse impact on the surrounding properties, the neighborhood, or the community as a whole.
- d) The granting of a variance will not be detrimental to public health, safety and welfare or injurious to surrounding property values and neighborhood character.
- e) The granting of the variance shall not be substantially inconsistent with any plans adopted by the Town.
- f) The granting of the variance shall not materially weaken the general purpose of the Zoning Ordinance or its regulations.
- g) The variance, if granted, shall only be to the extent necessary to afford a reasonable use of the property.

~~(5) No variance authorizing a change in the permitted uses of property shall be granted.~~

(6) Application.

An application for a Non-Use Variance shall be filed with the Community Development Department with the appropriate fee. No other applications may be submitted concurrently with a variance application. An applicant must have received approval of a non-use variance prior to submitting any development application or any other related application. Additional application materials may be required at the discretion of the Community Development Department as needed to clarify the variance request. **[Amended 12-17-96, Ord. 96-27]**

(7) Hearings and notice.

The application for a Non-Use Variance shall be reviewed by the Planning Commission. Provisions for a public hearing, notice and appeals of a Planning Commission decision shall be in accordance with Section 180-46 of the Town Code. A complete application containing all of the applicable information shall be presented not less than fifty-two (52) days prior to the regular Planning Commission meeting at which it will be heard. The Community Development Department may, at its discretion and for good cause, require a longer submittal period. The applicant must contact the Community Development Department for further information on the application submittal process. **[Amended 10-12-04, Ord. 04-16]**

C. *Variances and waivers:*

1. *Administrative variances fifty (50) percent or less:* The director of community development is empowered to decide upon applications for administrative variances from the strict application of any of the "development standards" pertaining to zone districts in article II and sections 26-501 (Off-street parking) and 26-502 (Landscaping requirements), and 26-603 (Fencing) and Article VII (Signage) of this chapter, which apply throughout the various zone district regulations and in other situations which may be specifically authorized in the various sections, without requirement of a public hearing, under the following conditions:
 - a. The variance does not exceed fifty (50) percent of the minimum or maximum standard; and
 - b. The director of community development finds that a majority of the criteria as set forth in subsection C.4 hereof, are substantially complied with and support the request; and
 - c. The director of community development has notified adjacent property owners by letter notice and posting of the site at least ten (10) days prior to rendering his decision, and that no objections have been received during such ten-day period. Any objections must be received in writing and be directly related to concerns regarding the request. General objections regarding existing land use conditions or issues not related to the request will not be considered grounds for objection.
 - d. That no additional dwelling units would result from approval of such variance or waiver.
 - e. In no instance shall the community development director hear or grant a variance as to use or as to an activity or development which is prohibited by this chapter nor shall the limitations of Charter section 5.10.1 be exceeded.
2. *Administrative variance appeals:* A decision by the community development director to deny an administrative variance or any conditions of approval imposed by the community development director may be appealed to the board of adjustment and shall follow procedures in accordance with section 2-61. A written appeal shall be submitted by the applicant to the community development department within ten (10) days of such administrative decision.
3. *Variances of more than fifty (50) percent:* The board of adjustment is empowered to hold public hearings to hear and decide only upon appeals for variances from the strict application of the development standards pertaining to zone districts in article II, sections 26-501, 26-503, 26-603 or Article VII of this chapter. Where a variance is made a part of another administrative process, such as a change of zone, subdivision or a formal site plan or development plan review which requires a public hearing before the planning commission and/or city council, then the planning commission and/or city council shall be empowered to decide upon such variance request concurrent with such other process; however, in deciding such variance or waiver the planning commission and/or city council shall be subject to the voting ratio as applies to the board of adjustment, set forth in Wheat Ridge Code of Laws section 2-53. In no instance shall the board of adjustment hear or grant a variance as to use or as to an activity or development which is prohibited by this chapter or by section 5.10.1 of the Charter.
4. *Criteria for review:* The community development director, board of adjustment, planning commission or city council shall base its decision in consideration of the extent to which the applicant demonstrates a majority of the following criteria have been met:
 - a. The property in question would not yield a reasonable return in use, service or income if permitted to be used only under the conditions allowed by regulation for the district in which it is located.
 - b. The variance would not alter the essential character of the locality.

- c. The applicant is proposing a substantial investment in the property with this application, which would not be possible without the variance.
- d. The particular physical surrounding, shape or topographical condition of the specific property involved results in a particular and unique hardship (upon the owner) as distinguished from a mere inconvenience if the strict letter of the regulations were carried out.
- e. The alleged difficulty or hardship has not been created by any person presently having an interest in the property.
- f. The granting of the variance would not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located, by, among other things, substantially or permanently impairing the appropriate use or development of adjacent property, impairing the adequate supply of light and air to adjacent property, substantially increasing the congestion in public streets or increasing the danger of fire or endangering the public safety, or substantially diminishing or impairing property values within the neighborhood.
- g. The unusual circumstances or conditions necessitating the variance request are present in the neighborhood and are not unique to the property.
- h. Granting of the variance would result in a reasonable accommodation of a person with disabilities.
- i. The application is in substantial compliance with the applicable standards set forth in the Architectural and Site Design Manual.

~~5. *Expiration:* Any variance granted by the board of adjustment or director of community development shall automatically expire within one hundred eighty (180) days of the date it was granted, or within such other time as the board of adjustment or director of community development may prescribe, unless a building permit for the variance is obtained within such period of time. If the building permit expires, the variance shall expire at the same time. Extensions of time may be granted by the community development director for good cause shown, but only if an application for the extension is made prior to the expiration of the variance.~~

D. Temporary permit for uses, buildings, signs and nonoperative vehicles.

- 1. General. Temporary permits for uses, buildings and signs may be permitted subject to the following restrictions:
 - a. No application will be accepted for a temporary use, building or sign which has previously been denied by planning commission or city council.
 - b. The temporary use, building or sign shall be consistent with the character and intent of the zone district in which the use, building or sign is proposed and shall otherwise meet all development regulations for that zone district.
 - c. The approval of any temporary use, building or sign shall not be transferable or assignable to any other landowner, tenant, lessee or occupant.
- 2. One-month temporary permit: The director of community development is empowered to decide upon applications for temporary buildings, uses or signs which would not otherwise be permitted in a particular district, without requirement of a public hearing, under the following conditions:
 - a. The duration of the building, use or sign shall not exceed one (1) month;
 - b. No other temporary permit has been issued within the previous one (1) year for the same or similar building, use or sign on the same premises;