



# Town of Nederland Board of Zoning Adjustment

## MINUTES

Thursday, August 9, 2012 ~ 7:30 pm  
Nederland Community Center  
750 Highway 72 North

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1) Call to Order

Chairman Stringfellow called the meeting to order at 7:30 p.m.

2) Roll Call

Present: Chairman Mark Stringfellow; Board members Ken MacFerrin, Mark Moll, Leonard Kottenstette, and Alternate Board member Roger Cornell.

Also present: Town Administrator Alisha Reis and Deputy Town Clerk Michele Martin

Absent: Board Member Debbie Davenport and Trustee Chris Perret.

3) Approval of minutes from July 12, 2012

A motion to approve the July 12, 2012 minutes was made by Board member Kottenstette, seconded by Board member Moll and approved unanimously, with Alternate Board member Cornell abstaining due to his absence from that meeting.

4) Public Comment

There was no public comment.

5) Discussion Items

There were no discussion items.

6) Action Items

- a. Approval of Findings of Fact related to Variance Application for setbacks for 308 Lakeview Drive.

A motion to approve the Findings and Decision for 308 Lakeview Drive was made by Board member MacFerrin, seconded by Board member

Moll and approved unanimously, with Alternate Board member Cornell abstaining due to his absence from that meeting.

**b. Consideration of Variance Application for setbacks for Susane Thomas, 171 E. 2<sup>nd</sup> Street**

The applicant, Susane Thomas, was present to introduce her request. Thomas is experiencing personal and financial hardships and is making a transition in her life. She currently owns two businesses, which she works separately by herself, and finds herself overwhelmed by working 24/7. She feels she could cut back on those hours by remodeling her existing one-car garage for consolidation of her businesses. She said she would then need a new garage to accommodate her car, and is requesting a variance to her front and side yard setbacks in order to build a new garage in line with the existing garage and house. She resides in the Neighborhood Commercial Zoning District, which requires a minimum front yard setback of 25 feet and side yard setback of 5 feet. Thomas is proposing to construct a 19-foot x 13.5-foot garage, if allowed to have a front yard setback of 6.8 feet. Thomas received a letter of support by nearby property owner Donna Kirkpatrick, 115 E. 2<sup>nd</sup> Street, which she proceeded to read for the record.

Board member MacFerrin asked to confirm why the garage has to be in the front, and the applicant replied that a 100-year flood plain in her backyard leaves limited space to expand.

Chairman Stringfellow asked about the alley in the back of her property, and Thomas responded that even though it is called an alley, it really acts as a backyard and parking for the apartments to her north. The only other area for her to consider would be the northeast section of her property, and that would have to be accessed through the old firehouse lot, which is owned by someone else. In addition, this location would not allow her to construct an attached garage.

Thomas had an Improvement Location Certificate (ILC) prepared by Flagstaff Surveying, which did not show the request for the side yard variance. In Thomas's hardship letter she makes the request for a 4-foot side yard setback. The additional 1-foot would allow a buffer for construction. Any overhanging eaves are permitted 3 feet into the setback and will be reviewed as part of the building permit process.

Thomas confirmed that 5 to 8 feet of her current front yard, which includes her fence, rock bed and berm, is in the Town right-of-way. Thomas understands this will be taken back for the Town during the

NED PED project. It was noted, there are no utility easements in this location.

Town Administrator Reis went through staff's review comments. Legal and Public Works had no issues with the proposal. The Fire Department's only concern was to ensure 6 feet between homes. The Downtown Development Authority and Staff's Geotechnical Engineer, Mark Weritz, had flood plain and drainage concerns. Weritz's review suggested that because Second Street was to be surveyed, re-designed, and re-graded as part of the NED PED project, that perhaps the applicant should wait. The primary consideration is drainage on Second Street, as it is not optimal to begin with, and any further development could impact how water moves.

There was further discussion on drainage issues. Thomas commented that Second Street is higher in elevation than her property, and that is why her house always floods. Chairman Stringfellow suggested not granting the side yard variance request, and leaving the 5-foot setback requirement to add a future swale, if needed. Reis pointed out that the neighbor's house to the west is very close to Thomas's property line, so the 5-foot setback is needed for fire suppression control in order to achieve the 6 feet required by the Fire Department.

It was suggested to take the Base Flood Elevation (BFE) as the starting point for construction, which can be ensured through the building permit process. The elevation drawing shows the concrete slab would be 15 inches above the finished floor level of the existing grade. Mark Smith, who was hired by Thomas during last year's major flooding on Second Street, attested that run-off goes behind the house to the creek, and does not flood in the southwest part of her property where the garage is proposed to be built.

Chairman Stringfellow suggested labeling the ILC, dated July 23, 2012, and stamped by Lee Stadele, as Exhibit 1, and the elevation drawing, by Waynewright Construction, as Exhibit 2 for reference.

Board member Cornell noted that the variance criteria had been met. The chairman called for a motion. Board member Moll made a motion to approve the front setback of the property to 6.8 feet as shown on the ILC Exhibit 1. Moll did not feel comfortable including Exhibit 2 in the motion, and felt the building permit process should have the flexibility as the applicant moves forward with the project. Since there was no second, the motion failed.

Board member Cornell made a motion to grant the front yard variance as requested, +/-6.8 feet as per ILC Exhibit 1, and encourage the elevation to be 15 inches as shown on elevation drawing Exhibit 2, seconded by Board member Kottenstette, and unanimously approved.

Board member Moll recommended that all residents on Second Street get together with the DDA to discuss plans. Thomas commented that a group has already been formed, and they are very excited about the improvements proposed by the NED PED project.

**7) Other business**

There are currently no pending applications.

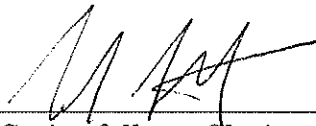
Board member Cornell wanted to mention that if it wasn't for the amendment to the Non-Conforming Code, approved by Ordinance #709, this application would never have been heard. Thomas's house is a non-conforming structure due to setbacks, and previously variances were not allowed.

The Board asked for staff to encourage applicants not to include financial considerations in their hardship letter.

**8) Adjournment**

A motion to adjourn was made by Board member Moll, seconded by Board member MacFerrin and unanimously approved to adjourn at 8:47 p.m.

Approved by the Town of Nederland, Board of Zoning Adjustment,

  
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Mark Stringfellow, Chairman

ATTEST:

  
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Michele Martin, Deputy Town Clerk