



Town of Nederland Board of Zoning Adjustment

MINUTES

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

1) Call to Order

Chairman Stringfellow called the meeting to order at 7:05 pm.

2) Roll Call

Present: Chairman Mark Stringfellow; Board Members Debbie Davenport, Mark Moll, Leonard Kottenstette and Ken MacFerrin; Trustee Liaison Mayor Joe Gierlach

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

Absent: Alternate Board Member Roger Cornell

3) Approval of minutes from August 4, 2011

A motion to approve the minutes was made by Board Member Davenport, seconded by Mayor Gierlach and approved unanimously by a roll call vote with Board Member Kottenstette **abstaining**.

4) Scheduled Business

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

Town Attorney Beery introduced the item and summarized the memo she'd previously sent to the Board. She emphasized that it is up to the Town to determine for itself what criteria should drive the variance requests, and went through examples of code from other communities and how they implement their variance criteria.

Board Member MacFerrin joined the meeting at 7:10.

Board Member Davenport wondered if it would generate resentment vis-à-vis decisions made in past cases if the code changed now. Beery said no – the law is an ever-evolving thing and it's OK for it to change over time. Town Administrator Reis emphasized that the issue could be considered from a political perspective, and that the BOT will certainly do that. MacFerrin wondered if the group should review the BOT's strategic goals and build the criteria around them; Reis opined that the current goals are more project-based and specific and she doesn't think they make sense as a driver for these criteria.

Board Member Moll joined the meeting at 7:16

Davenport wondered if sustainability could be incorporated in a more significant way. Mayor Gierlach was in support of the idea of a 'sustainability clause' and gave the example of wind turbines as a situation where variances would make sense. Beery emphasized that code would need to specifically define what "sustainability" means so the group would feel comfortable making judgments based on that criteria. The group agreed that there are two issues at hand: 1) the possibility of adding new criteria, and 2) how many of the criteria must be met in order to award a variance (all, majority, etc).

Reis read a statement from Alternate Board Member Cornell, who said that historically the code was worded such that all five criteria had to apply no matter what, which made it difficult to grant a variance. Accordingly, they added the "as applicable" with the intent that all criteria should be met to the extent they are relevant and apply to the situation. His recommendation is to clarify the wording to say "all criteria, insofar as are applicable, should apply."

Both Beery and Reis weighed in on how they've seen the criteria applied, and agreed that they've seen the "all criteria" requirement most commonly with a fair number of "majority of the criteria" as well. Reis noted that she has seen "majority" in communities that are more economically depressed and want to make sure they don't close doors, while resort-type communities are more likely to be restrictive and require "all." She reminded the group that variances should be rare, and if one type of variance shows up over and over that indicates a problem with the zoning code.

Moll opined that if all criteria always had to be met, they historically wouldn't have been able to grant some variances that made a lot of sense.

MacFerrin opined that he preferred more strict criteria so Board Members aren't tempted to just "help out" applicants who they may know personally.

The Board had a discussion about the issues highlighted by the Rewinkel case, namely the non-conforming lot issue. Reis pointed out that the Town was between a rock and a hard place re: that specific case. The group agreed that the non-conforming lot dynamic is a problematic code issue that needs to be addressed. Reis said the issue will be brought up and fleshed out more fully by the Planning Commission and the Board of Trustees soon. The Board was in favor of the idea of allowing conforming improvements to buildings even if the lot is non-conforming; Reis promised to communicate that sentiment to the Planning Commission.

MacFerrin took it back to "what are the goals of the Town?" and whether those goals are fixed enough or tangible enough to tailor the criteria to them. Mayor Gierlach talked about how BOT goals will largely be about a 3-legged approach to sustainability that includes the environment, community, and economic sustainability. Davenport hypothesized how a variance could be used to encourage energy conservation. MacFerrin noted that for commercial properties, the economic sustainability piece seems clear, but wondered how that could be applied to residential properties. Mayor Gierlach answered that multi-use projects, infill development, home-based businesses and projects near public transportation are all possibilities for variances based on sustainability. Moll noted that most of the variances that come before the Board are small residential improvements with no "big picture" benefits that only serve to increase the owner's property value.

Davenport noted that the better the code is written, the fewer variances the Board will see; if they start seeing a lot of variances based on solar and sustainability, that means the code needs to change. She argued that improving the code is a better way to solve the issue than for the Board to keep on creating "loopholes" like the solar clause. MacFerrin agreed, saying that maybe the criteria should stay the same but the basic code should change to allow for these things.

Beery said that a very common “bigger picture” criteria is that “the project is in conformance with the Comprehensive Plan” – which then allows for consideration of things like economic development or whatever the Town priorities are at the time. She noted that adding that criteria could be an option when the Comprehensive Plan document is in good shape. Reis explained that the Board of Trustees’ intent is to have the Envision 2020 process be the overarching, visionary piece and that the Comprehensive Plan will weave that in. Planning work and the resulting Comprehensive Plan document will reflect the Envision 2020 themes such as sustainability.

The group returned to the “how many criteria should apply” discussion. Chairman Stringfellow said he is OK with the criteria that are in there, and would like to see something added that gives consideration to someone making a major investment in the Town, even though that is something the Board has not been allowed to consider in the past. He would also like to implement more stringent expiration timelines for the variances. MacFerrin likes the flexibility of having options, but wants the overall Town goals to drive the criteria and not the personal opinions of the Board members. The group agreed it would be good to tie in the Comprehensive Plan as a living document so it can always reflect the current goals of the Town.

Mayor Gierlach expressed concerns about letting projects progress that are in conflict with the Town’s goals just because they meet ‘some-but-not-all’ of the criteria, and argued that all five criteria should be met. MacFerrin said that criteria ‘c’ (the applicant didn’t create the problem themselves) is a key one; if only a majority of criteria need be met and that one becomes optional, he worries about the many things that could get pushed through.

Moll noted that the BZA isn’t a policy-making board and wants to keep things as concrete as possible. He has concerns about general or vague criteria. MacFerrin wondered if the Comprehensive Plan will be specific enough to base criteria upon. Davenport said that the concept of ‘supporting the Comprehensive Plan’ is grey for her; Moll agreed. Board Member Kottenstette said he leans towards the applicants having to meet all five criteria.

The group agreed that they are in favor of all five criteria being met as well as an expansion of the solar clause so as to address

sustainability more broadly. Chairman Stringfellow said he would also like to see an expiration timeline imposed upon the variance and would like to have more staff follow-up on which variances actually get acted upon.

A motion to request that Town staff provide suggested language that would make all five of the present criteria mandatory as well as language that allows for the solar exception to be broadened to take into additional sustainability concerns was made by Board Member MacFerrin, seconded by Board Member Moll and approved unanimously by a roll call vote.

The Board agreed that they would like to see and discuss the proposed language again at the January meeting before it goes to the Board of Trustees.

- b. Update on Board of Trustees' decision regarding Trustee liaison voting dynamics.

Reis let the group know that the Board of Trustees decision on how to handle the situation was to make the BOT liaison a regular voting member of the Board.

5) Other business

There was no other business.

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 8:30 p.m.

TOWN OF NEDERLAND



Mark Stringfellow, Chair

ATTEST:



Michele Martin for Kristen Edwards, Deputy Town Clerk