



**TOWN OF NEDERLAND
BOARD OF ZONING ADJUSTMENT
Nederland Community Center
750 Hwy 72**

February 11, 2010

7:00 PM

1) Roll Call

Present: Mark Moll, Denise Jackson, Debbie Davenport, Mark Stringfellow, Steve Taylor, Ken MacFerrin

Debbie Davenport excused herself from the Board to present the first application to the Board.

2) Scheduled Business

A. PUBLIC HEARING TO CONSIDER an application for a setback variance at 235 E. Fifth St

Debbie Davenport, presented on behalf of Charles and Edith Wood, to the BZA.

They are requesting to be allowed to add a deckS on the east side of the house. They also want to make a main floor addition to house. There will not be a square footage increase on the footprint but will increase the size of the home. Additionally they would like to add a gable roof to the south because on the second floor as there is a bedroom that has a low ceiling and if they are able to make the change it will increase the view and the solar gain.

They feel there are unique circumstances to the lot as there is a narrow north end to the lot. The south part of the site is steep and the driveway comes in on the south. Because of the shape and steepness of the site, the house is on the north side. It would have been almost impossible to meet the setback requirements due to the conditions of the site.

Staff is against the request for the zero foot setback request for the other side. He offered a solution that would meet the 5-foot requirement.

The original setback on the front should have been 25 feet on the back but the code can allow 13'6" due to the neighbors but they are requesting that be further reduced to four feet.

The Library Foundation representatives were asked if they had spoken with the Maurer family about working with the library on this item as they share the property line that they need the setback.

They have no problem with setback variance on the rear lot line.

The Chairman recommended they approach the Maurer Family about the 10-foot lot line on the north. The Foundation said it was not possible to work with them in the timeline they have set for building the library.

The Board of Zoning Adjustment questioned how this was not a self-imposed hardship. The applicant said they feel the building needs to be safe and the covered entry way is part of providing that. They are also providing a trail for the town. They feel this is not a self-imposed hardship.

BZA members pointed out this hardship was only because they wanted to put a 4000 sq ft building on a lot that is not large enough. They again asked the applicant to explain how the hardship was not created by the applicant and why it needs to be a building this size on this lot.

The applicant said they could not afford a larger site and that this was the smallest building they could build to serve the community. They do not want to have a second floor as they will not have the staff to monitor a second floor.

Barnett said that as a Trustee he feels the library provides a service to the town that should allow some leeway in the criteria.

Staff said the BZA could approve a variance for the 3rd St side of the building and not the East side and that would give them time to bring their design into conformance.

The Foundation said the 10-foot trail easement they gave the

town also created a hardship for their proposed building, as they have to maintain an eight-foot lot line still.

Their proposed building would be out of compliance on the roof by two feet and the column by 5 feet.

BZA member had a hard time justifying that the library could not redesign the building to bring it into conformance.

Bringing the roof and column into compliance would help the BZA approve the applicant.

The BZA asked the applicant if they wanted this item to be continued while they redesigned the building and/or worked with the Maurer Family.

The applicant agreed to modify the building to have the roof and the column if the BZA could approve the request for the back lot line.

If they were not granted the variance then they would not be able to build a building large enough for the needs of the community.

The trail is to connect 2nd St to 3rd St. to connect the community center to the bus station. They looked at putting it in other spots on the site but nothing was feasible.

The applicant said it is the needs of the community that are driving the need for this building to be built as planned. Members of the board said they could still do a 2nd floor. The library disagreed with them on this point as it would cost more and require more staffing.

The requirement for a rear-setback in Neighborhood Commercial is 15 feet.

The BZA was struggling to find a defensible reason to allow the request without setting a precedent for other applicants. The applicant argued that as this was a public use and the constraints were put on them by the town's request for the trail and the creek running through the path.

The applicant said if this was approved, then a new library was at risk of not happening.

They do not believe the change will alter the nature of the neighborhood. The proposed changes will not impact the views of the neighbors. They feel this is the least modification possible to accomplish their goals.

Commissioner Jackson asked when the house was built. It was built in 1978. It was pointed out that the improvements will improve the solar gain to the home. They are considering adding solar panels to the improved roof design. Members of the Board believed this met goals of the town by encouraging a more environmentally friendly design. It would reduce the need for air conditioning too by allowing cross ventilation.

The rear yard setbacks are the only ones they are having a difficult time meeting.

Staff said this would be an expansion of a nonconforming use.

The Board discussed the fact that they are not supposed to allow variances to nonconforming lots unless it brings the house more into conformance.

Since they are not increasing the footprint of the building, most BZA members did not feel it was problematic to grant this request.

16-232: powers of the BZA read by the Chairman.

1. Unique circumstances: the applicant made the case that this was applicable as to be able to meet the driveway criteria.
2. Topography: the BZA agreed this was applicable
3. Applicable
4. Agreed that this would not impact the neighbors, would not be changing the essential character of the neighborhood
5. Minimum variance that will afford relief and the least modification possible

Denise Jackson pointed out 16-232 allowed the bza to modify to allow access to sunlight for solar energy devices.

The architect said this would apply to this property's proposed modifications.

A motion was made by Ken to allow expansion of existing

structure for allowing access to sunlight for solar energy devices.

Chairman Stringfellow seconded the motion.

A roll call vote of the board resulted in the motion passing unanimously.

The chairman allowed a five minute recess and the Board reconvened at 8:04PM .

B. Public Hearing to consider an application for setback variances submitted by the Nederland Community Library

Matt Chiodini, with Oz Architecture, explained how the library site met the requirements for a variance to the setback requirements. They are requesting zero setbacks on the east side of the building and a 13.5 setback on the north side.

First, they feel they met the unique characteristics component as the creek runs through the middle front of site and the easement for a trail on the site is required by the town.

The library is trying to build their new building on land they purchased and combined with donated land from the neighbors. The library is being built with the intent of meeting the future needs of Nederland. They originally hoped to have a 6000 sq ft building but have scaled it back to 4800 sq ft for this lot.

The applicant explained that when the library received the land vacated by the Town, the Maurers kept ten feet of the vacated land to bring their own property into compliance.

Character of the neighborhood includes the fire dept and two churches. They have a parking agreement with the Calvary Church

They are also asking for a zero lot line to allow large visibility on Second Street and to allow a covered entry to the library.

16-33 allows reduction in 25-foot setback to 50% if the abutting properties are not in compliance as they are here.

Staff is not opposed to the setback variance request to the north side, as it will be in line with the rest of the neighborhood.

The Chairman recommended the BZA make a motion and vote on it to give the applicant direction on what to do.

A motion was made by MacFerrin to approve the application for a 4 foot setback (9"6' variance to the requirement) on the north side and zero setback on the east (5 foot variance on the east). The motion was seconded by Chairman Stringfellow.

A roll call vote of the Board resulted in the motion failing with Commissioners MacFerrin, Moll, and Davenport, and Stringfellow voting against the measure and Commissioner Taylor voting for it.

The Board of Zoning Adjustment members said they felt that the applicant had not met the burden of proof.

- 3) Other Business
- 4) Adjournment at 9:40 PM

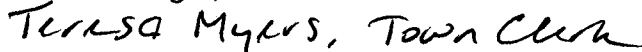
TOWN OF NEDERLAND



Mark Stringfellow, Chairman

ATTEST:


Christi Leenogle, Town Clerk


TERISA MYERS, Town Clerk



CERTIFICATE OF VARIANCE
TOWN OF NEDERLAND

Location of property 235 E 5TH CHARLES + EIRTH WOOD

Type of variance granted Swan Lighting / Swan Devices 16-232 (3)(B)

Conditions of variance NO STAIRS BEHIND PRESSUR HOUSE

Date variance granted 2/11/10

This variance was granted to you by the
Town of Nederland Board of Zoning Adjustments.