



**TOWN OF NEDERLAND
BOARD OF ZONING ADJUSTMENT
REGULAR BUSINESS MEETING**

**NEDERLAND COMMUNITY CENTER
750 Hwy 72 Nederland, CO 80466**

October 11, 2012 7:00 P.M.

AGENDA

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF MINUTES FROM AUGUST 9, 2012

D. PUBLIC COMMENT

E. DISCUSSION ITEMS

F. ACTION ITEMS

1. Approval of Findings of Fact related to a Variance Application for a setback at 171 E. 2nd Street.

G. OTHER BUSINESS

H. ADJOURNMENT



**Town of Nederland
Board of Zoning Adjustment**

MINUTES

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

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. 2nd 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. 2nd 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 is 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,

Mark Stringfellow, Chairman

ATTEST:

Michele Martin, Deputy Town Clerk

NEDERLAND BOARD OF ZONING ADJUSTMENT
TOWN OF NEDERLAND, COLORADO

In Re: Application of Susane Thomas, 171 E. 2nd Street for a front and side yard setback variance

FINDINGS AND DECISION

THIS MATTER COMES before the Town of Nederland Board of Zoning Adjustment (the "Board") upon the application of Susane Thomas ("Applicant") for a front and side yard setback variance in the Neighborhood Commercial (NC) zone district located at 171 E. 2nd Street in Nederland, Colorado (the "Property"). The Board, having conducted the required public hearing and being fully advised in the matter, enters the following Findings and Decision.

FINDINGS

1. The front yard setback applicable to the Property is twenty-five feet (25'). The side yard setback applicable to the Property is five feet (5'). The Applicant has requested a variance from these setback requirements to permit the location of a 19-foot x 13.5-foot attached garage within said front and side yard setback area on the southwest corner of the Property.

2. On July 23, 2012, the Applicant submitted a variance application, including all maps, plats and exhibits thereto (the "Application").

3. The Application proposes to reduce the front yard setback to 6.8 feet (6.8') to be aligned with the existing garage and house, and to reduce the side yard setback to four feet (4') to allow a buffer for construction of the garage, off the southwestern portion of the house.

4. The Application states that other areas of the Property are unsuitable for building a garage due to the A-1 Flood Zone running through the rear yard. To meet setback requirements in this area would necessitate securing special materials to ensure the garage won't wash away in floodwaters, which includes different building code standards and requirements to meet.

5. Nederland Municipal Code (the "Code") Section 16-233 requires the Board to conduct a public hearing on any variance application. After due and proper notice, the Board conducted a public hearing on the Application on August 9, 2012.

6. At the hearing, the Application was received into evidence.

7. Ms. Thomas testified before the Board. Ms. Thomas testified that she currently owns two businesses, and health and financial issues are driving her need to renovate her existing garage for consolidation of those businesses. Ms. Thomas then desires a new garage for her vehicle, attached to her house for easy access in the wintertime.

8. Ms. Thomas testified that she purchased her home because it sits on three lots with ample room to add on in the future, yet has now found out that the buildable space on the north of her property is limited due to the 100-year flood zone.

9. Ms. Thomas acknowledged that five to eight feet of her current front yard, which includes her fence, rock bed and berm, is in the Town right-of-way. Ms. Thomas understands this will be taken back by the Town during the NED PED multi-use pathway project planned for Second Street.

10. Ms. Thomas said she understood that she will be required to come before the Planning Commission to dissolve her lot lines to create a conforming structure.

11. Ms. Thomas testified that the hardship was created prior to her ownership. The house currently sits within the 25-foot setback and was originally built in 1935. The applicant bought the property in 2006.

12. Town Administrator Reis testified that the Fire Department requires six feet (6') between homes for fire suppression control. Reis also testified that Mark Weritz, Town's Geotechnical Engineer, submitted his concerns regarding flood plain and drainage. Weritz suggested waiting for the redesign of 2nd Street during the NED PED project.

13. The Board closed the public hearing.

14. The Board labeled the Improvement Location Certificate (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.

15. The Board suggested taking the Base Flood Elevation (BFE) as the starting point for construction.

16. Code Section 16-232(a)(1) authorizes the Board to approve a variance from the strict application of the provisions of Chapter 16 of the Code (the Town's zoning regulations) when the Board finds that all of the following criteria are 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.

17. Based upon the testimony and evidence received at the hearing, the Board makes the following findings with respect to the Application's compliance with Code Section 16-232(a)(1):

- a. There are unique physical circumstances and conditions peculiar to the Property, such as the high risk A-1 Flood Zone to the rear of the house.
- b. To meet the setback requirements of the Code, with the existing unique physical condition, building a garage in the floodplain could displace water, and the result could alter the ecosystem of the North Boulder Creek, reduce the natural ground surface that would have helped soak up the water, and increase the height of rising flood waters to make flooding worse everywhere along the banks.
- c. The Applicant did not create the hardship presented by the unique physical condition of the Property.
- d. The proposed garage would not alter the essential character of the neighborhood, as there are other houses and garages sitting on or near property lines on the same street, nor will it impair the appropriate use or development of the Property; and
- e. It is the belief that the variance is the minimum needed to afford relief for the applicants.

DECISION

Based upon the foregoing findings and its review of the entirety of the evidence and testimony presented at the public hearing, the Board hereby APPROVES Susane Thomas for a front yard setback variance (reduction of front yard setback to 6.8 feet as per Exhibit 1), encourages the elevation to be 15 inches (15") as shown on Exhibit 2, and denies the side yard setback to 4 feet due to the need for fire suppression control, in the NC zone district located at 171 E. 2nd Street in Nederland, Colorado, as presented in the Application.

APPROVED AND ADOPTED by the Nederland Board of Zoning Adjustment this 11th day of October, 2012.

Mark Stringfellow, Chairman

ATTEST:

Michele Martin, Deputy Town Clerk

CERTIFICATE OF MAILING

I certify that on October _____, 2012, a true and correct copy of the foregoing **FINDINGS AND DECISION** was placed in the United States mail, postage prepaid, and addressed to:

Susane Thomas
171 E. 2nd Street
P.O. Box 116
Nederland, CO 80466

Michele Martin, Deputy Town Clerk