

**TOWN OF NEDERLAND
BOARD OF ZONING ADJUSTMENT
Meeting Notice**

RESPONSIBLE DEPARTMENT: Administration

CONTACT STAFF MEMBER: Michele Martin, Deputy Town Clerk

AGENDA

The Board of Zoning Adjustment will be holding a meeting on Thursday, January 12th at 7:00 pm. The meeting will take place at the Nederland Community Center (750 Highway 72 North). The meeting agenda is as follows:

- 1) Call to Order**
- 2) Roll Call**
- 3) Approval of minutes from October 13, 2011**
- 4) Scheduled Business**
 - a. Consideration of new language to amend Nederland Municipal Code Section 16-232(a)(1) to clarify variance criteria applicability.
 - b. Consideration of a variance request for the Community Center to allow a new sign to be constructed that exceeds code requirements.
- 5) Other business**
- 6) Adjournment**



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



AGENDA INFORMATION MEMORANDUM NEDERLAND BOARD OF ZONING ADJUSTMENT

Meeting Date: January 12, 2012

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.

UPDATE SINCE OCTOBER 13, 2011

Upon direction of the BZA at its last meeting, the Town attorney amended the proposed code change related to variance criteria to include a requirement that all criteria be met before issuing a variance and that sustainability goals be included as a path to variance.

BACKGROUND:

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 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. All of this material was reviewed by the BZA at its October 13, 2011 meeting.

ALTERNATIVES:

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

ATTACHMENTS:

- 1) Draft code amendment language

FINANCIAL CONSIDERATIONS:

None

TOWN OF NEDERLAND, COLORADO

ORDINANCE NUMBER _____

AN ORDINANCE AMENDING SECTION 16-232 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 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:

Section 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 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.

(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 purposes of considering access to sunlight for solar energy devices and achieving sustainability criteria adopted by the Board of Trustees.

(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.

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 _____, 2012.

TOWN OF NEDERLAND, COLORADO

Joe Gierlach, Mayor

ATTEST:

Teresa Myers, Town Clerk

APPROVED AS TO FORM:

Carmen Beery, Town Attorney



AGENDA INFORMATION MEMORANDUM NEDERLAND BOARD OF ZONING ADJUSTMENT

Meeting Date: January 12, 2012

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

AGENDA ITEM:

Consideration of a variance request by the Town of Nederland re: installation of a new sign that exceeds code requirements for size at the Community Center (750 Highway 72 North).

SUMMARY:

The Town of Nederland has submitted a request for a sign variance in order to replace an existing entrance sign at the Community Center. The proposed sign would be 6 feet by 8 feet, or a total 48 square feet.

The property is zoned Medium Density Residential, where the maximum size for entrance signs is 32 square feet.

Nederland Municipal Code Section 18-87 governs variance criteria for signs. This is separate from the typical variance criteria contained in NMC Section 16-232 (the five "hardship criteria" the BZA typically employs when considering variances). The relevant section is printed below, emphasis added:

Sec. 18-87. Variance criteria and conditions.

In every case in which a request for a variance from the requirements of the sign code has been filed, **the Board of Zoning Adjustment shall not grant a variance unless it specifically finds that each of the following conditions exist:**

- (1) There are special circumstances or conditions such as the existence of buildings, topography, sign structures or other matters on adjacent lots or within the adjacent public right-of-way which would substantially restrict the effectiveness of the sign in question. Such special circumstance or conditions, however, must be peculiar to the particular business or enterprise to which the applicant desires to draw attention and do not apply generally to all businesses or enterprises.
- (2) The variance would be in general harmony with the purposes of this Article and would not be injurious to the neighborhood in which the

business or enterprise to which the applicant desires to draw attention is located.

(3) The variance is the minimum one necessary to permit the applicant to reasonably draw attention to his or her business or enterprise. (Ord. 348 §204, 1992)

This application was put forth by the Community Center Foundation Board, which is commissioning the sign on the Town's behalf. CCFB President Dale Porter will be in attendance to answer any questions of the Board.

It is the Town's perspective that the sign would not injure the neighborhood, given its design and its placement being in the same location as the existing sign. The existing sign is 32 square feet, and the proposed sign would be 48 square feet – primarily due to adding the hanging portion at the bottom to advertise the building's tenants. The height of the sign would remain similar to the existing sign. The sign has likely been located on its current site for many years due to the sloping topography of the Community Center lot, with the sign's location being the highest point and thus, best seen by passing traffic. Whether the size is the minimum necessary to permit adequate attention to the center is arguable, but the Town supports the concept of dividing the building announcement/marquee section from the standard advertisement of the building's tenants.

ALTERNATIVES:

- 1) Approve the variance request
- 2) Deny the variance request

ATTACHMENTS:

- 1) Variance application
- 2) Sign permit application
- 3) Renderings of the proposed sign
- 4) Public notice address list

FINANCIAL CONSIDERATIONS:

None



Application for Sign Variance Board of Zoning Adjustment

Town of Nederland

45 W. 1st Street, PO Box 396, Nederland CO 80466

Name: Town of Nederland

Address: 45 W. First St., PO Box 396, Nederland, CO 80466

Phone: (Home) _____ (Work) (303) 258-3266

Email: alishar@nederlandco.org Date of Application: Dec. 27, 2011

Address and location of property: Street Address: 750 Highway 72 North, Nederland, CO

Block _____ Lot _____ Subdivision _____ Zoning MDR

If applicant has applied for a sign permit, please complete the following section:

Date of sign permit application: Dec. 20, 2011

Date sign permit denied: Dec. 20, 2011

Reason for denial of permit: Dimensions of sign exceed code allowances (NMC Sec. 18-93 (2)b), which allows for entrance signs to measure up to 32 square feet. The proposed sign measures 8 feet by 6 feet (48 square feet), including the main sign and the secondary hanging sign. Current sign is 4 feet by 8 feet (32 square feet).

In addition to completing the form above, applicants must submit the following:

- The sign permit application referenced above if already submitted, or a newly completed sign permit application if not.
- A hardship statement explaining the situation and the reason for the variance request. The explanation should include any unique circumstances or conditions which might justify granting the variance and must specifically address each of the three criteria delineated in N.M.C. Section 18-87.
 - o Can be in the form of a letter addressed to Zoning Administrator Alisha Reis
- A set of mailing labels of all property owners and addresses within 300 feet of the boundaries of the property in question. This can be obtained
 - o from the Boulder County Assessor's Office (303) 441-3530 for a fee; or
 - o using the 'buffer' tool on the e-mapping section of the Assessor's website: <http://maps.bouldercounty.org/boco/emapping/>
 - This tool will generate a list of the required properties, which can be exported into a CSV file & printed onto mailing labels
- Check or cash for non-refundable \$300 application fee



TOWN OF NEDERLAND SIGN PERMIT APPLICATION

Date: December 20, 2011
Applicant Name: Nederland Community Center Foundation
Name of Business: Dale Porter, Chair
Mailing Address: PO Box 950 Phone: x3082
Physical Address where sign will be: 750 N. Hwy 72
Zoning District: MDR
Property Owner: Town of Nederland
Property Owner's Address: 45 W. 7th St
Property Owner's Phone(s): x3266
Sign Contractor or Erector: Apex Aspen, Matt Zeman
Contractor's Address: PO Box 344 Contractor's Phone: 3049-1427
Rollinsville 80474

REQUIRED SIGN SPECIFICATIONS:

Style: Freestanding Wall (flush to wall) Awning (attached to awning)
 Projecting (attached to wall but projecting and double-faced)
Type of sign: New Replacement Sign face replacement only
Sign Height: 6' Sign Width: 8' Total Square Feet: 48 sq. ft.
Sign Depth 12" Sign clearance above sidewalks: 3'6"
Distance of projection from the building (if Projecting or Awning): n/a
Type of sign: Residential: _____ Commercial:
Sign Material(s) (wood/metal/etc.) wood
Number of already existing signs: 1 Total signs proposed: 2
Illumination: Indirect: X - recessed can lights in header Internal: _____
Total wattage: (Maximum allowed - 10w per square foot) 40 watts, per Peak to Peak
Method of Support or Attachment: Pine poles, pine cross member, slabs (logs)

Distance to the property line: 10'

COMPLETE IF SIGN IS FREE-STANDING:

Is sign located on a State Highway? YES NO

If yes, does the sign have an electronic message board component? YES NO
(State Highway Department authorization may be required)

REQUIRED ATTACHMENTS:

1. A site plan, drawn to scale, showing the location of existing or proposed buildings or other structures on the lot, the location of existing signs and proposed sign(s) on the premises, and the location of public right-of-way on or adjacent to the property.
2. Elevation drawings of the proposed sign(s), drawn to scale, showing dimensions of the proposed sign, including height, clearance above sidewalks and distance of projection from the building.
3. Proposed sign text.
4. Nature, layout, and dimension of lettering.
5. Type and location of proposed illumination.
6. Any additional information that the applicant feels may support the request.
7. A permit fee of \$100.00, payable by cash or check made payable to "Town of Nederland" to cover processing and inspection costs.

Kristen Edwards (for NCCF)
Applicant Signature

12/20/11
Date

Please submit this application to the Nederland Town Hall, P.O. Box 396, 45 W. First St., Nederland, CO 80466. Tel) 303.258.3266 Fax) 303.258.1240

FOR OFFICE USE ONLY		Sign Permit # <u>SP11-12</u>	
<input checked="" type="checkbox"/> Paid Amount: <u>\$100</u>	Received By: <u>AReis</u>		
Application <input type="checkbox"/> Approved or <input checked="" type="checkbox"/> Denied (If denied, attach written explanation)		<u>Exceeds code for size (Sec. 18-93)</u>	
Clerk/Administrator Signature <u>Alisha Fair</u>		Date _____	
Inspections) Zoning:	<input type="checkbox"/> Approved <input checked="" type="checkbox"/> Denied	Dimensions By: <u>AR</u>	Date: <u>12/20/11</u>
Building:	<input type="checkbox"/> Approved <input type="checkbox"/> Denied <input type="checkbox"/> N/A	By: _____	Date: _____
Electrical:	<input type="checkbox"/> Approved <input type="checkbox"/> Denied <input type="checkbox"/> N/A	By: _____	Date: _____
Building permit # (if applicable): _____			
When marked as approved with official signature, a copy of this application shall serve as the permit			



Existing sign (on location)



Proposed sign (on location)