



Town of Nederland Board of Zoning Adjustment

MINUTES

Thursday, April 12, 2012 ~ 7:00 pm
Nederland Community Center
750 Highway 72 North

1) Call to Order

Chairman Stringfellow called the meeting to order at 7:18 pm.

2) Roll Call

Present: Chairman Mark Stringfellow; Board Members Ken MacFerrin, Debbie Davenport, Mark Moll, and Leonard Kottenstette.

Also present: Town Administrator Alisha Reis, Deputy Town Clerk Michele Martin, and Town Attorney Carmen Beery.

Absent: Alternate Board Member Roger Cornell and Trustee Chris Perret.

3) Approval of minutes from January 12, 2012

A motion to approve the January 12, 2012 minutes was made by Board Member MacFerrin, seconded by Board Member Moll, and approved unanimously, with Chairman Stringfellow abstaining due to his absence from the previous meeting.

4) Scheduled Business

- a. Discuss newly amended Nederland Municipal Code Section 16-232(a)(1) to clarify variance criteria applicability, Ordinance number 706.

Town Attorney Carmen Beery was present to discuss Ordinance 706 that was recently approved by the Board of Trustees (BOT) at their March 20, 2012 meeting. This Ordinance was recommended on behalf of the Board of Zoning Adjustment (BZA) due to questions the Board

had raised regarding the existing criteria and whether it was legislatively mandatory to meet all criteria. The BOT agreed that clarity was needed. The BZA had recommended to add “and achieving sustainability criteria adopted by the Board of Trustees” to subsection (b). The BOT agreed to this change, as well as added “and wind for renewable” in regards to energy devices. So, if a variance application comes in for harnessing the wind, then this addition would allow for that type of use.

Board member MacFerrin questioned whether the verbiage “sunlight and wind” was appropriate, or should it be “sunlight and/or wind”. Beery stated, from a legal point of view, it would not make a difference.

The sustainability criteria, to be adopted by the BOT, will be another tool for the BZA to use in hearing variances. Chairman Stringfellow questioned whether BOT’s sustainability criteria would be more restrictive than BZA’s. Beery noted that appeals would not go to the BOT; any BZA decision would go directly to District Court.

MacFerrin stated that the sustainability criterion was a placeholder. Board member Moll noted it was a work in progress as sustainability technology continues to evolve, and it goes with the Town’s general theme of using renewable energy.

Board member Davenport thought the BZA may see more greenhouse height variances come through, which brought up a good question: would greenhouses fall under solar or sustainability? Beery said sustainability criteria would apply to greenhouses, because sunlight would refer to energy, and greenhouses don’t usually produce energy.

MacFerrin noted that the way the subsection (b) is worded, “Where feasible, the Board *may* vary or modify the application of this Chapter.....” enhances the BZA’s ability and is not restrictive.

Town Administrator Reis reminded the BZA that staff will continue to review cases first before making recommendation to the BZA, but wanted the BZA to feel comfortable in how to apply these criteria before another case is submitted.

Reis also wanted to mention that a number of the cases recently before the BZA were related to the non-conforming lot issue, and that the Planning Commission was scheduled to discuss this issue at their April 25 meeting. Staff has analyzed four residential neighborhoods to research the issue, and the findings were that 64% of Big Springs, 40%

of Sunnyside/Hilltop, and 25% of Old Town was non-conforming due to lot size. Reis felt that the most efficient Code change would be an allowance for alteration if the structure still met other zoning regulations, such as height and setback requirements. This would allow staff to review and approve the proposal without having to go before the BZA with another variance case. Currently, you can initially build on a non-conforming lot; you just can't alter the structure after it's built. Reis noted that once you start seeing a pattern before the BZA, chances are there is a code problem. The Planning Commission is planning to make recommendation to the BOT on the 25th.

Davenport stated that she will be in attendance at the April 25 Planning Commission meeting and encouraged other BZA members to attend in order to represent the BZA in support of this Code change. As an architect and a BZA member, Davenport can attest to the number of issues she has come across from clients and applicants. Stringfellow said he would attend also. The Board wanted to express to the Commission that it was unanimously in support of the Code change to allow more development and flexibility for property owners of non-conforming lots, even if some members were not able to attend on the 25th.

Board Member Kottenstette had a question regarding solar shading. He wanted to know if there was anything in the Building Code that could prevent an applicant from receiving approval for a height variance (i.e. solar panels) that may block a neighbor's sun. Stringfellow answered that under a variance request an applicant would be required to notify neighbors within 300'. Basically, it would be the neighboring property owners' responsibility to voice a complaint. The BZA would take those into consideration at the time of the hearing. Stringfellow mentioned that he uses Google Earth to check out a visual on the property in question, and MacFerrin said he likes to drive by an applicant's property for a visual inspection prior to meetings.

Some members thought that seasonal residents may have an issue because they aren't around to provide input, and some may not get their mail until months later. It was noted that the agenda does get posted and the legal notice is printed in the paper. The property owners notice does not go out by certified mail, but it does go to the property tax address, even if out of state. If resident letters are received by Town Hall, they will be included in the packets. The solar

shading issue would really impact residents, not so much property owners who own vacation homes.

5) Other business

Chairman Stringfellow's term expires June 2012. He has submitted his reappointment form, which will bring his term to June 2017.

The next meeting is scheduled for July 12, unless there are no cases before the Board.

The BOT has requested all advisory boards to implement bylaws. Staff will draft the bylaws and schedule their review for the next meeting.

6) Adjournment

A motion to adjourn was made by Board member Kottenstette, seconded by Board member MacFerrin, and unanimously approved to adjourn at 8:00pm.

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



Mark Stringfellow, Chairman

ATTEST:



Michele Martin, Deputy Town Clerk