



# Town of Nederland Board of Zoning Adjustment

## MINUTES

Thursday, May 19, 2011 ~ 7:00 pm  
Nederland Community Center  
750 Highway 72 North

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### 1) Call to Order

Acting Chairman MacFerrin called the meeting to order at 7:07 pm.

### 2) Roll Call

Present: Board Members Debbie Davenport, Mark Moll and Ken MacFerrin (Acting Chairman); Alternate Board Member Bill Martin.

Absent: Chairman Mark Stringfellow

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

### 3) Approval of minutes from January 13, 2011

A motion to approve the minutes was made by Board Member Davenport, seconded by Board Member Martin and approved unanimously by a roll call vote.

### 4) Scheduled Business

- a. Consideration of a setback variance request by Saint Rita's Church, 326 Highway 119.

Board Member MacFerrin began the meeting with a prepared statement explaining the hearing procedure and the conditions the Board must consider when hearing the variance requests, as stated in NMC 16-232.

Administrator Reis introduced the item, explaining that St. Rita's is looking to build a memorial garden flush with the front property line, so is requesting a full front setback variance.

Jeff Fruth, 845 Cold Springs Road, spoke as a representative for St. Rita's. He gave the history of the proposal as it developed, explaining that the passing of Brian Mahon and others around the same time inspired the idea for the garden. They only realized mid-way through the process where the property line lies; given the large space in between the church and the highway they assumed they had much more room. They moved the garden from the ideal spot (which would have been in the highway right-of-way) to just inside the property line, but need a variance from the setback to build it in that location. Other locations on the property are not viable, and they feel that the impact on adjacent properties would be negligible.

The meeting was opened to public comment.

Janette Smith, 60 Caribou Road, spoke in favor of the project. She stated that the property was "scrunched" when the highway came through and imposed the right-of-way, and feels it's only fair that the garden be allowed to go all the way to the property line.

Mike Morrissey, 465 Evergreen Way, and his son Nick are St. Rita's parishioners. He said the project will be made of local, natural materials and will be tastefully constructed, and emphasized how nice of a space it will be. The garden would give people somewhere to go when the church is not open. Nick is on track to be an Eagle Scout and he and his fellow Scouts are interested in working on the project.

Guy Newton, 75 E. 2<sup>nd</sup> Street, a 17-year member of St. Rita's, said the prayer garden is a place where people can come to reflect and pray 24 hours per day, 7 days per week. He feels that is very important and is strongly in favor of the project.

It was clarified that the structure will be entirely on the church's property. The Board discussed the reasons that the structure triggers the setback requirements; namely the overarching trellis and structural beams rather than much of the project that could be considered landscaping. Mr. Fruth answered questions about the structural components of the project and said the total height will be approximately 10 feet. Mr. Newton reiterated that when he is

working at the church on the weekdays, he is often approached by people looking for a place to pray and worship; the project gives people that opportunity even when no one is available to let them into the church. Board Member Davenport asked if any concerns had been raised by neighbors; neither Staff nor the applicant received any. Mr. Fruth showed the Board a site plan from the 1940's and explained the dynamics of how the highway coming through changed the boundaries of the property.

The meeting was closed to public comment and opened to Board deliberation. The Board agreed that the proposal met criteria "a" in a straightforward manner. There was a discussion as to what extent the proposal met criteria "b" given that with the removal of the overhead beam structure, there would be no need for the variance request. Regarding "c", the group agreed that while the structural design triggering the variance request is created by the applicant, the conditions vis-à-vis the highway's imposition on the property line were not created by the applicant. With regard to "d", the group agreed that the project fits well with the character of the neighborhood and will not impair adjacent property. There was some debate regarding criteria "e" and the ways that a lesser variance could possibly be awarded.

A motion to approve the request for a setback variance for the prayer garden proposed by St. Rita's Church (326 Highway 119), based on meeting criteria a, c and d of N.M.C. 16-323(a)(1), was made by Board Member Davenport, seconded by Trustee Nowicki and approved unanimously by a roll call vote.

- b. Consideration of a setback variance request by Paul Rewinkel, 259 W. 4<sup>th</sup> Street.

Reis introduced the item, explained that Mr. Rewinkel is seeking a front setback variance that would allow him to build a single family residence using the existing foundation, which protrudes into the setback. The property was formerly comprised of two, non-conforming lots; a lot line dissolution has been approved by the Board of Trustees, but will not go into effect unless the variance request is approved, per the applicant's request.

Paul Rewinkel, 459 W. 4<sup>th</sup> Street, said that his application as written by his attorney Mark Cohen best states his position. He said there has been significant expense already to date on the property and that the proposed project will not allow him to break

even, but is an effort to minimize the amount of money lost. He believes the project as proposed will fit in well with and complement the character of the neighborhood.

The meeting was opened to public comment.

Leonard Kottenstette, 334 W. 4<sup>th</sup> Street, said the property has been a thorn in the side of its neighbors for some time. He believes that the limitations of the properties were known by Cherry Creek Mortgage and the applicant. He has issues with the history of the applicant building without a permit and violating stop work orders on the property. He listed a number of concerns he has with the property and its potential development. He is OK with grandfathering things in, but thinks when you make major changes you need to come into compliance, and believes this project falls under the latter scenario.

Board Member Davenport asked if the lot coverage requirement would be violated by the proposed project. Mr. Rewinkel said he has done the calculations and that would not be the case. The group gathered around the site plan as Mr. Rewinkel answered a number of questions about specific details of the property and the dynamics of the proposed project, including excavation and the structural properties of the foundation. In response to questions, Mr. Rewinkel said the variance request stems from issues with the topography as well as financial considerations.

The Board asked how Staff regards the application. Reis explained that Staff's review indicated that the Board could approve the request based on conformance with criteria "d" and "e" and possibly "c". The Town sees the lot line dissolution creating a conforming lot as a positive. It was reiterated that many of the concerns raised by Mr. Kottenstette are not explicitly relevant to the Board's decision, but rather would be addressed during administrative, zoning and building code review when the applicant applies for a building permit.

The Board debated as to whether criteria "a" was applicable and questioned if the "reasonable" condition of "b" was met. Regarding "c" the Board referenced the meeting in November when the full history of the property was detailed, and noted that it appeared that the applicant was aware of the 'hardships' and chose to purchase the property anyway. It was agreed that the Board could consider the benefit to the Town of the dissolved lot line creating a

conforming lot. With regard to “d” it was agreed that the variance does not alter the essential character of the neighborhood, and that the proposed solution resolves a long-standing issue for the Town. The group agreed that if money were no object, the project could be completed without needing a variance, and debated the extent to which the steepness of other areas of the lot make it prohibitive to build there. The concept of “reasonableness” was brought up again; Board Member MacFerrin stated that while it’s possible that someone could come in and scrape the buildings and put in a conforming structure, he doesn’t see that as likely to occur. In his opinion the question is whether the solution as presented is ‘reasonable’ and does it bring enough public good and benefit to the neighborhood and the Town to justify the variance. Board Member Martin stated that he leans towards the less-impactful solution. The Board agreed that the lot line dissolution creating the conforming lot is a significant benefit to the Town, particularly in comparison to the decaying structures currently in existence, and that public safety would also be increased. Board Member Davenport wondered if the approval of the variance would set an unwelcome precedent. Board Member MacFerrin opined that there are enough unique considerations in this case that that wouldn’t be a problem; Board Members Moll and Martin concurred. Board Member Martin said he gives some credence to the fact that the foundation was constructed prior to 1972 when the zoning code was established, and sees this situation as an example of how the Town is still ‘cleaning up’ old structures and their related zoning issues.

The possibility of approving the variance contingent upon the house being built as proposed was considered; it was agreed that the existing yard and bulk requirements make it unnecessary to do so.

A motion to approve the 18-foot front setback variance based on meeting criteria “d” of N.M.C. 16-323(a)(1), on the condition that off-street parking is clearly delineated and that every attempt will be made to build within the footprint of the two existing foundations and the area between them, and directing Staff to prepare findings of fact to that effect, was made by Board Member Martin, seconded by Board Member Moll and approved unanimously by a roll call vote.

- c. Consideration of a setback variance request by Jasbir Chahal, 24266 Highway 119.

Reis introduced the item, stating that the request is for a variance that would allow construction of a cover over the entrance to the house. She explained that variances have been issued previously on the property with regard to the cell tower that shares the property and the house as it is currently constructed.

It was noted that the applicant is out of the country and so was unable to attend the hearing. Reis clarified that the Town Attorney was consulted on the matter and ruled that the applicant's presence at the hearing is not required. Trustee Nowicki expressed his desire that that the BOT consider a code change requiring the presence of an applicant or their representative at hearings such as this.

There was a discussion as to whether the home's existing construction made it seem as though the proposed project was always intended. In response to questions, Reis clarified that the house is one foot outside of the setback and that an overhanging protrusion of this sort is allowed to extend into the setback by 3 feet, so the variance being requested is four feet more than what would be permitted without a variance. Trustee Nowicki opined that "d" is the only criteria met by the application. There was a discussion as to how effective the overhang would be given the orientation of the home and the wind and snow coming from the west; many Board Members were doubtful. It was argued that the permitted four foot cover would be equally as effective (or ineffective) as one requiring a variance. The group agreed that it would be a much-improved discussion if the applicant were present to answer questions and discuss the situation, and debated whether or not to table the item until the applicant is available to attend the meeting.

A motion to table the item to a date certain was made by Board Member Moll seconded by Board Member Davenport, and denied by a vote of 2-2.

A motion to deny the variance based on a lack of meeting the criteria in N.M.C. 16-323(a)(1) was made by Board Member MacFerrin, seconded by Board Member Martin and denied by a vote of 3-1.

The Board had an additional discussion as to the reasons for the votes on both sides. The group was in agreement that the information provided in the application was not sufficient to justify the variance. It was argued that the burden is on the applicant to

make his or her case as best they can, and the applicant was informed that not attending the meeting could hurt his chances for approval.

A motion to deny the variance based on the application not meeting criteria "a", "b", "c" and "e" of N.M.C. 16-323(a)(1), and directing Staff to prepare findings of fact to that effect, was made by Board Member MacFerrin, seconded by Board Member Davenport and approved unanimously by a roll call vote.


**5) Other business**

Board Member MacFerrin stated that he has some questions regarding the consideration criteria and how many of them need to be met in order to grant a variance. He requested that the Town Attorney generate a memo clarifying that dynamic.

**6) Adjournment**

A motion to adjourn was made by Trustee Nowicki, seconded by Board Member MacFerrin and approved unanimously by a hand vote at 9:50 p.m.

TOWN OF NEDERLAND

  
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Ken MacFerrin, Acting Chairman

ATTEST:

  
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Kristen Edwards, Deputy Town Clerk







**CERTIFICATE OF VARIANCE  
TOWN OF NEDERLAND**

**Location of property: St. Rita's Church, 326 Highway 119**

**Type of variance granted: Setback**

**Conditions of variance: None**

**Date variance granted: May 19, 2011**

**Zoning Administrator:**

*Alisha Reis*

Alisha Reis

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



**CERTIFICATE OF VARIANCE  
TOWN OF NEDERLAND**

**Location of property: 259 W. 4<sup>th</sup> Street**

**Type of variance granted: 18-foot front setback variance**

**Conditions of variance: Clearly delineated off-street parking; Every attempt should be made to build within the footprint of the two existing foundations and the area between them**

**Date variance granted: May 19, 2011**

**Zoning Administrator:**

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This variance was granted to you by the  
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