



Town of Nederland Board of Zoning Adjustment

MINUTES

Thursday, August 14, 2014 ~ 7:00 pm
Nederland Community Center
750 Highway 72 North

1) Call to Order

Chairman Stringfellow called the meeting to order at 7:06pm.

2) Roll Call

Present: Chairman Stringfellow, Vice Chairman Ken MacFerrin

Board Members: Debbie Davenport, Leonard Kottenstette, Mark Moll (arrived at 7:22pm), Trustee Liaison Kris Larsen

Also present: Town Administrator Alisha Reis and Deputy Town Clerk Cynthia Bakke.

3) Approval of minutes from January 9, 2014

Motion made by Member Kottenstette, seconded by Chairman Stringfellow, 4 in favor, with abstention from Kris Larsen as he was not on the Board at this time.

4) Public Comment

There was no public comment.

5) Discussion Items

There were no Discussion items.

6) Action Items

Consideration of a Zoning Variance Application for a 15-foot front setback variance for a proposed single-family residence by Architect Wayne Gipp (on behalf of property owner Diana Strokan) at 60 E 5th Street.

Architect Wayne Gipp presented the case on behalf of the property owner/applicant. He explained that the property was recently purchased to build a family home, however in order to meet the Medium Density Residential (MDR) district's 25-foot front setback would require mitigating part of the existing aspen grove, as well as the management of on-site drainage. Gipp indicated that the slope from 5th Street to the property line is +/- 7 feet, requiring

considerable fill to accommodate the front setback, as well as the rear of the house, which would necessitate a 12-foot foundation wall.

Gipp explained that the presented design attempts to address drainage concerns as expressed by Geotechnical Engineer/Hydrologist Mark Weritz to contain the drainage on the property. He said that the property owners would like to disturb the structures, power lines and aspen grove at the rear of the property line as little as possible.

Gipp said that the proposed house is 1700 square feet, with a footprint of 2200 square feet, which is below lot coverage requirements. He proposed a 10-foot setback with fill for an 8% grade from street to garage. He used large format displays of the photos included within the packet. He indicated that nearby houses are in close proximity to the street. The house design includes a garage, thus there would be no on-street parking, he said.

There are currently no proximate structures on lots to the east of 60 E 5th Street.

Chairman Stringfellow inquired if the owner's intend to build the house if the variance is denied. Gipp said that he cannot answer for the applicant without discussion, however he indicated that the property owners didn't want a steeper driveway than proposed, considering it will be icy for most of the year.

Vice Chairman MacFerrin noted the 10-foot utility easement setback at the rear. Chairman Stringfellow asked if the house would meet rear and side setbacks, if in keeping with the front setback requirement. Gipp affirmed that the house design would meet other setbacks, but highlighted the site drainage issues which were factored into the design.

Gipp said that on-site drainage containment has inherent challenges due to site topography. Vice Chairman MacFerrin asked about alternate solutions considered besides a variance. Reis noted that drainage is a consideration, which the town staff confirmed on a site visit, but that the town does not engineer solutions for applicants.

Board discussion continued regarding site drainage, as Gipp noted the hardship of drainage management without neighbor encroachment. Reis stated that the roadway is well above the building site, thus the drainage challenges, which can be further reviewed as adjacent vacant lots may encounter similar issues.

Kottenstette observed that about 70% of the aspens are underneath the power lines, and thus, there are limits to the grove's growth.

Reis explained that an average setback can be derived based on the adjacent homes, per Sec. 16-73 Exceptions to yard requirements. Unfortunately, the home to the west is not faced to 5th Street, and cannot be considered, nor upon the vacant lots to the east. She acknowledged that shorter “urbanist” setbacks seen along 5th Street would not alter the current character of neighborhood.

Member Davenport inquired about criteria that the applicant hasn’t created the hardship, despite another criteria which allows for topographical considerations, such as the slope from street grade and drainage management. As the neighborhood was not developed by the property owner, the criteria can be weighted to take this into account, said Reis.

Chairman Stringfellow asked if town anticipates a future increase in road width. Reis said that there is a forthcoming proposal before the Planning Commission that may include multi-family housing units, however there will be interior circulation within the development. She said that widening of the road would be more likely at the road’s south end.

There is no legal issue for the town to reclaim the right-of-way under any circumstances, unless deeded, said Reis. The driveway connection to the roadway may require an encroachment permit, as building within the town right-of-way is prohibited, she said, noting that encroachments are revocable, and any road widening would necessitate case-by-case negotiation with property owners. Reis said that any encroachments would then be included within the title and survey work.

Chairman Stringfellow asked about solar access, if keeping within the zoning setback of 25-feet. Gipp said that the requested 10-foot setback would improve solar access by allowing the house to be elevated.

Vice Chairman MacFerrin asked Gipp how the 15-foot request was derived. Gipp said he used modeling to create a minimal grade for the driveway (8%) factoring in drainage considerations, which will require a 12-foot foundation wall, as well as a large step from the walk-out.

Trustee Larsen read the 5 specific criteria which the Board must consider. Reis reminded the Board that they must agree that all criteria be met in order to grant the variance.

The Board discussed whether the property complies with the criteria. Member Davenport said that she feels it qualifies for the first condition with unique topographical considerations as setbacks would not be an issue upon a larger lot to include a driveway with a switchback. Chairman Stringfellow disagreed stating that there are ways to design for a less-steep driveway. Gipp stated that

an east-west facing garage would be 22-foot deep, pushing the house farther south.

Reis clarified that the criteria is about the lot, not how it will be developed, and asked the Board if there are unique or peculiar aspects warranting the variance request.

Chairman Stringfellow asked Gipp if the lot can be developed in conformity without a variance. Gipp stated that he would not recommend building a reasonably-sized house and garage upon this lot due to size and slope. Discussion ensued about developing the site with a detached garage with differing setbacks, or without a garage. Trustee Larsen asked the board to consider creating a lesser variance for the garage, and a lesser setback for the house than requested.

Member Moll noted that if conforming to the setbacks, it would be the only house to do so along the road. Member Kottenstette said that other houses to be built upon the vacant lots would have the example set by this house. Vice Chairman MacFerrin noted that the current character of the neighborhood is the criteria consideration. Reis said it is reasonable to consider neighbor alterations, as vacant lots will have a precedent set regarding the front setback.

Reis noted that a paved driveway would increase the lot coverage percentage. Member Davenport added that this percentage would also be increased by pushing the house further south. Chairman Stringfellow asked if the house can be developed in conformity with driveway standards and current district setbacks. Gipp said that neither he nor the applicant would desire this, which may max out the grade for driveway standards.

Gipp stated that he would need to communicate with the property owner as to see if she wants to proceed, pending the Board's decision.

Chairman Stringfellow and Member Moll argued that it is not a steep lot for Nederland. Chairman Stringfellow stated that the lot may require a higher development cost; however this is not a variance consideration.

Gipp noted that the road narrows further east, though Reis responded that most roads in town are not built to proper right-of-way width. The houses further east would then get a "buy-down average", which would be the average between the 25-foot setback and front setback if variance granted to Strokan/Gipp, thus re-establishing the setback along the road. This would then be an administratively-approved variance for future developments, said Reis. Vice Chairman MacFerrin acknowledged the Board's responsibility to establish the minimum variance due to this consideration.

Vice Chairman MacFerrin asked Gipp what additional design challenges would be faced if granted a 10-foot variance, rather than the requested 15 feet. Gipp said that more fill would be required to bring the house up from existing grade, with retention on the sides for drainage, so as to not encroach upon neighboring properties.

Reis stated that property owners will bear the impact if 5th Street is widened, with respect to right-of-way, such as is being experienced with 2nd Street. Chairman Stringfellow said that he is concerned about further development along 5th Street and thinks that the lot can be developed in conformity with NMC Sec. 16-33.

Gipp asked if town will allow drainage to the utility easement, at the rear of the property. Reis said that any less than a 5-or-10 year storm event must be contained to infiltrate upon the site. She acknowledged that no site will contain all drainage, but as much on-site management as possible is required.

Reis said that the Board appeared unable to qualify the second criteria as the house design can be altered, although the proposed design may not be able to be built to conformance.

Member Moll noted that road access may qualify for a partial variance, as Gipp stated that the property would sit 7-feet below the road. Vice Chairman MacFerrin said that lot being below road grade and the drainage issues may not require a variance of 15-feet. Chairman Stringfellow asked the Board to consider the minimum variance to achieve the desired result with respect to these concerns.

Motion to approve a 7½-foot variance to the front setback, due to unique characteristics of drainage and roadway elevation of the lot made by Vice Chairman MacFerrin, seconded by Kottenstette, all in favor. The Findings of Fact will be drafted for review, to be voted upon on October 9.

7) Discussion Items

There were no discussion items.

8) Other business

The recommendations of Mayor's Task Force on Building will come before the BZA for the NPP review, said Reis. Chairman Stringfellow requested a separate work session. Reis said a Doodle poll for dates will be forwarded.

Reis said that the Master Infrastructure Plan was approved by the Board of Trustees on August 9.

9) Adjournment

Motion to adjourn at 9:12p.m. by Trustee Larsen, seconded by MacFerrin, with all in favor.

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



Mark Stringfellow, Chairman

ATTEST:



Cynthia Bakke, Deputy Town Clerk