



Town of Nederland Board of Zoning Adjustment

MINUTES

Thursday, August 8, 2013 ~ 7:00 pm
Nederland Community Center
750 Highway 72 North

1) Call to Order

Chairman Stringfellow called the meeting to order at 7:07 p.m.

2) Roll Call

Present: Chairman Mark Stringfellow, Board members Ken MacFerrin, Leonard Kottenstette, Debbie Davenport, Mark Moll and Trustee Annette Croughwell.

Also present: Deputy Town Clerk Cynthia Bakke.

Absent: Alternate-Board member Roger Cornell

3) Approval of minutes from January 10, 2013

A motion to approve the January 10, 2013 minutes was made by Kottenstette, seconded by MacFerrin and approved unanimously, with Croughwell abstaining as she did not join the Board of Zoning Adjustment until July 2013. Chairman Stringfellow welcomed Croughwell to the Board.

4) Public Comment

There was no public comment.

5) Action Items

1. Consideration of a Zoning Variance Application from Sec. 16-89 Fences for a proposed reconstruction of a pre-existing fence by Jessica Prince and Khurram Ansari at 8 Blue Spruce Drive.

Chairman Stringfellow asked Prince and Ansari to summarize their variance request to rebuild a fence. Prince explained that the fence was pre-existing, but in disrepair with rotten wood and two panels missing, having fallen in spring 2013. She said her contractor was

replacing this fence when he was issued stop work order from Public Works.

Prince reported that they spoke with neighbors about the fence, with no objections noted. In fact, she reported approval from neighbors in terms of the potential aesthetic enhancement. Prince said that their priority is the safety of their neighbors and themselves, as they must back out onto the intersection. She said as the fence hasn't been a problem for last 30 years, they seek to replace the rest of fence.

MacFerrin asked if the proposed fence would be erected along the previous fence line. Prince affirmed, however said there will be ½-inch spaces between the slats to allow passage of wind. She estimated that this would keep the fence panels from being blown down, as well as increasing visibility. MacFerrin inquired whether the applicants would follow Public Works' recommendation about the fence being angled at the corner. Prince said they measured twelve feet from property line, stating that the farthest they could go would be thirteen feet before the land slopes down.

Moll asked if the proposed fence would be the same height. Prince affirmed that the fence would be rebuilt to the previous height of six feet. Croughwell said that she understood the previous fence to be nonconforming, stating that the Town does not want to continue this nonconformity.

Stringfellow spoke about (NMC) Sec. 16-89 (e), which states "it is unlawful to construct or erect any fence exceeding three feet in height within 100 feet of the center of any intersection of two or more streets or roads". He talked about potential safety aspects if a nonconforming fence is rebuilt due to hazards with snowplowing. The applicants were asked if the fence can be rebuilt as conforming. Prince responded that if reconstructed to Code, this would necessitate cutting halfway into their driveway.

Reis discussed how nonconforming structures are required to come into conformance if deconstructed and rebuilt, if this is possible. She said that Public Works has underscored the sight distance issue to the applicants and within the attached memo. She suggested that the

applicants angle the fence diagonally at the corner for proper vision clearance to avoid danger to the public and snowplow drivers.

Stringfellow inquired as to the purpose of the fence. The applicants responded that are on an exposed corner and would like to mitigate the wind, snow, and dust as they get in and out of vehicles. Ansari said they feel like continued mending of the fence is a larger safety issue as it has been dilapidated for many years.

Reis acknowledged that code enforcement had not been an active priority in town in the past, allowing for nonconforming structures or situations to exist. She noted that Public Works told the contractor that this fence created an ongoing safety issue. Prince testified that Public Works has never communicated this issue to them personally. Reis said that she understood that the crew had cited the vision clearance issue with the applicants.

Davenport inquired if translucent material can be used to increase visibility. Board members also discussed whether just the corner portion could be rebuilt to four feet for the same purpose. Croughwell asked if this material or height difference is desired by the applicants. Prince responded that they desire to maintain the appearance of the neighborhood. She also noted that a shorter fence would reach the level of snowdrifts that build up along the edge due to height of road.

Discussion ensued about the amount of variance that the Board would be willing to grant, and if the application met all five elements of criteria. Public Works had asked for no more than a six-foot variance; however, the applicants are requesting an eighteen-foot variance.

MacFerrin asked about the proposed angle for the corner and if the remainder of the fence is nonconforming. Reis responded that the vision clearance requirement is from the corner, and the placement of the rest of the fence is a non-issue. She stated that the maximum sight variance requires eighteen-feet; however, the Board can agree to provide a lesser sight variance.

Reis read the five conditions that must be met by applicants to secure a variance. She asked Board members if they feel that the applicants

have met the criteria. MacFerrin said that Reis mentioned that the elevation of roadways and the topography of the streets themselves are more a problem than the property itself.

MacFerrin motioned to grant a vision clearance variance of fifteen feet for the applicants, based upon the forthcoming Findings of Fact that they meet all five elements of criteria, Moll seconded, 4 in favor, with Stringellow and Kottenstette voting against this variance request.

Reis told the applicants that she would need to see a site map from the fence builder to ensure proper measurement prior to construction.

2. Consideration of a Zoning Variance Application for a 20-foot front setback variance for a proposed alteration to an existing open deck by Lawrence Pope at 71 Doe Trail.

Lawrence Pope spoke about his house and the existing deck, which is roughly eleven feet from the property line. He noted that various county maps reveal that no house on that road is adhering to the setback requirements. He said that the telephone junction box extends fourteen feet into the road, and his driveway projects from that point. He also noted that almost every house is under an acre, which also conflicts with code specifications for lot size.

Pope said he would like to enclose the existing deck to create an airlock to allow easier access for him and his wife. He said his wife has two metal hips and will soon have two knee replacements, thus they desire to unload from a higher level, above the snowdrifts.

Pope said he would replace the 6"x6" posts to full height for the airlock, to match the roof of the house, thus maintaining the architectural style. He admitted that the hardship was created by the builder; however, his wife's medical issues could be addressed by this proposed deck enclosure.

Pope also noted that he will need to repair or replace the current retaining wall; however, Reis clarified that this is not part of the variance consideration.

Reis mentioned that in earlier years, homeowners on nonconforming lots were prohibited from any new construction. She referenced Ordinance 709, adopted in June 2012, which amended Sec. 16-182, stating that a nonconforming use may be changed only to a conforming use. She also noted that the physical condition of occupants is not considered as part of the five elements of variance criteria. As the home is not a commercially accessible building, there is no obligation to comply with ADA requirements.

Croughwell noted that a variance granted would allow for the nonconforming status to continue. The Board evaluated the application to see if it fulfills the essential variance criteria. The house was built a foot beyond the allowance, with measurement established from the overhang. MacFerrin inquired if the variance had been granted by Boulder County, would it then be allowed to come before this Board. Reis replied that it would generally be excluded from consideration for a future variance.

Stringfellow asked Reis if Town Attorney Carmen Beery foresaw issues with approving a variance for this application. Reis responded that despite many people wanting to age in place, the Board is not able to take physical condition into consideration.

Reis responded to a query of whether granting this variance would set precedent by increasing the present nonconformity. She said that variances are always reviewed on a case-by-case basis, dependent on that specific property; therefore it would not set a precedent. MacFerrin said that granting this request will increase volume and overhang, but he doesn't see this as exacerbating the nonconformity. Reis replied that it will maintain the nonconformance.

Pope used the survey and attached pictures to indicate that he lacks an option of building this airlock in another location to meet his need. MacFerrin said he feels the applicant is making a reasonable request, without any safety issues impacting consideration of the proposal.

Reis said that zoning setbacks were adopted by Nederland in 1981, this structure was built in 1999; however, there is no reason that it should have been built as a nonconforming structure. She clarified that any attached deck or patio is considered a structure, but the

overhang is not included. MacFerrin noted that the proposed enclosure is not crucial for maintenance of the structure, but a matter of convenience. He inquired if a fraction was reduced from the edge, would this constitute an increase in compliance. Reis acknowledged that development within the setback would still require a variance.

Davenport said that she was informed previously by Beery in a BZA training session that the Board has done due diligence if they ascertain that a sound argument is made for each of five conditions. The Board continued discussion of whether the application has fulfilled the five elements of criteria required to grant the requested variance.

Davenport motioned to allow a twenty-foot variance from the front setback, on the basis that it has met required criteria, seconded by Moll, 5 in favor, with Stringfellow voting against the request. Stringfellow advised the applicant against any further encroachment into this setback.

Reis reported that she and Beery will draft the Findings of Fact on these two applications, which will have to be approved at the October meeting. A Certificate of Variance will attest to the decision, presented to the applicants and filed with Boulder County.

Reis clarified that lot size is often the reason why most properties are nonconforming. She noted that the Big Springs subdivision has specifically seen nonconformities due to build-out and topography.

Discussion among Board members continued after the hearings concluded regarding code compliance. Croughwell said she is happy to join the Board of Zoning Adjustment, and would like to know what members need to know from the Board of Trustees' standpoint.

6) Discussion Items

There were no discussion items.

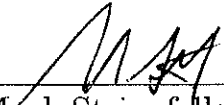
7) Other business

The next meeting is scheduled for October 10, 2013 to approve Findings of Fact for these respective properties.

8) Adjournment

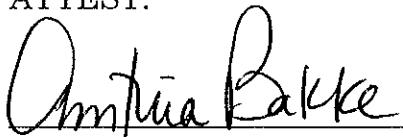
Croughwell motioned to adjourn, seconded by Kottenstette, with all in favor at 8:50 p.m.

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



Mark Stringfellow, Chairman

ATTEST:



Cynthia Bakke, Deputy Town Clerk