



# Town of Nederland Board of Zoning Adjustment

## AGENDA

Thursday, July 14, 2011 ~ 7:00 pm  
Nederland Community Center  
750 Highway 72 North

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- 1) Call to Order
- 2) Roll Call
- 3) Approval of minutes from May 19, 2011
- 4) Scheduled Business
  - a. Approval of findings re: setback variance request by Saint Rita's Church, 326 Highway 119.
  - b. Approval of findings re: setback variance request by Paul Rewinkel, 259 W. 4<sup>th</sup> Street.
  - c. Approval of findings re: setback variance request by Jasbir Chahal, 24266 Highway 119.
  - d. Consideration of recommendation to reappoint Mark Moll to the BZA
- 5) Other business
- 6) Adjournment



# 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

\_\_\_\_\_  
Ken MacFerrin, Acting Chairman

ATTEST:

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Kristen Edwards, Deputy Town Clerk





**AGENDA INFORMATION  
MEMORANDUM  
NEDERLAND  
BOARD OF ZONING ADJUSTMENT**

**Meeting Date: July 14, 2011**

**Initiated By: /s/ Alisha Reis  
Dept: Administration**

**AGENDA ITEM:**

Approval of findings re: setback variance request by Saint Rita's Church, 326 Highway 119

**SUMMARY:**

The Board approved the setback variance request by Saint Rita's Church (326 Highway 119) at its May 19<sup>th</sup> meeting. The attached Findings and Decision on the item have been drafted for the Board to review and adopt if accurate.

**ALTERNATIVES:**

- 1) Approve findings
- 2) Do not approve findings, identify inaccuracies

**ATTACHMENTS:**

Findings and Decision

NEDERLAND BOARD OF ZONING ADJUSTMENT  
TOWN OF NEDERLAND, COLORADO

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In Re: Application of St. Rita's Church (326 Hwy 119) for a front yard setback variance

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**FINDINGS AND DECISION**

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THIS MATTER COMES before the Town of Nederland Board of Zoning Adjustment (the "Board") upon the application of St. Rita's Church ("Applicant") for a front yard setback variance in the General Commercial (GC) zone district located at 326 Highway 119 in Nederland, Colorado (the "Property"). The Board, having conducted the required public hearing and being fully advised in the matter, enters the following Findings and Decision.

**FINDINGS**

1. The front yard setback applicable to the Property is twenty-five feet (25'). The Applicant has requested a variance from this setback requirement to permit the location of a memorial prayer garden within said front yard setback area on the northeast corner of the Property.
2. On May 2, 2011, the Applicant submitted a variance application, including all maps, plats and exhibits thereto (the "Application").
3. The Application proposes to reduce the front yard setback to zero feet (0') to locate the prayer garden immediately adjacent to the front property line.
4. The front yard property line abuts Colorado Highway 119. The paved portion of Highway 119 does not extend the entire width of the right-of-way. The church has historically used a portion of the Highway 119 right-of-way for a driveway and parking lot. Additionally, there are several trees located within the right-of-way. The Application asserts that the Applicant was not aware that the front Property line was not adjacent to, or near, the paved portion of Highway 119.
5. The Application states that other areas of the Property are unsuitable for use as a prayer garden due to their steeper slope and lack of existing access to the church's parking lot.
6. Nederland Municipal Code (the "Code") Section 16-233 requires the Board to conduct a public hearing on any variance application. After due and proper notice, the Board conducted a public hearing on the Application on May 19, 2011.
7. At the hearing, the Application was received into evidence.
8. Mr. Jeff Fruth testified before the Board on behalf of the Applicant. Mr. Fruth testified that the ideal spot for the garden is in the right-of-way, in a location the church believed was theirs until they were mid-way into the planning process for this project.

9. Mr. Fruth submitted a site plan of the Property from the 1940s into evidence to illustrate how the location of Highway 119 altered the boundaries of the Property. The boundary alteration was not initiated by the Applicant.

10. Mr. Fruth further testified that the church reconfigured their plans to move the garden just inside its actual property line after the true boundary was discovered. Mr. Fruth testified that other areas of the Property were unsuitable for prayer garden purposes and that he believed that the impact of the garden at its proposed location on neighboring properties would be negligible.

11. Janette Smith testified in favor of the Application. She testified that the Property was "scrunched" when Highway 119 was created and that she believed it was therefore only fair that the Applicant be permitted to use its Property right up to the front Property line.

12. Mike Morrissey testified in favor of the Application. Mr. Morrissey testified that the garden would be tastefully constructed and would give people a place to go when the church building was closed.

13. Guy Newton testified in favor of the Application. Mr. Newton testified that the garden would give people a place to reflect and pray around the clock.

14. The Board discussed how the Application implicates the setback requirements of Code Section 16-33 because the project includes the construction of a trellis and structural beams. Otherwise, the Board noted, the garden would be considered landscaping and would not require a variance to be located within the setback.

15. Board member Davenport asked if concerns had been expressed by neighbors. Town Staff and the Applicant both indicated that they had not received any negative comments from neighboring properties.

16. The Board closed the public hearing.

17. Code Section 16-232(a)(1) authorizes the Board to approve a variance from the strict application of the provisions of Chapter 16 of the Code (the Town's zoning regulations) when the Board finds that 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 [Chapter 16];
- 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 [Chapter 16's] provisions which are in question.

18. Based upon the testimony and evidence received at the hearing, the Board makes the following findings with respect to the Application's compliance with Code Section 16-232(a)(1):

- a. There are unique physical circumstances and conditions peculiar to the Property, such as its unusual size and configuration due to the location of Highway 119 through the Property in the past, and the varying slope of the Property.
- b. It might be possible to add the prayer garden to the Property in the same proposed location in conformity with Chapter 16 by simply removing the proposed trellis and beams.
- c. The Applicant did not create the hardship presented by the unique physical condition of the Property.
- d. The proposed prayer garden would not alter the essential character of the neighborhood nor impair the appropriate use or development of the Property. Testimony was received that the garden would be a welcome addition to the neighborhood.
- e. There might be a way to grant a lesser variance to afford the Applicant some relief. The Board did not receive evidence concerning such alternatives.

**DECISION**

Based upon the foregoing findings and its review of the entirety of the evidence and testimony presented at the public hearing, the Board hereby APPROVES the Application of St. Rita's Church for a front yard setback variance in the GC zone district located at 326 Highway 119 in Nederland, Colorado, as presented in the Application.

APPROVED AND ADOPTED by the Nederland Board of Zoning Adjustment this 14<sup>th</sup> day of July, 2011.

\_\_\_\_\_  
Ken MacFerrin, Acting Chair

ATTEST:

\_\_\_\_\_  
Kristen Edwards, Clerk to the Board

CERTIFICATE OF MAILING

I certify that on July \_\_\_\_\_, 2011, a true and correct copy of the foregoing **FINDINGS AND DECISION** was placed in the United States mail, postage prepaid, and addressed to:

St. Rita's Church  
c/o Jeff Fruth  
P.O. Box 901  
Nederland, CO 80466

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**AGENDA INFORMATION  
MEMORANDUM  
NEDERLAND  
BOARD OF ZONING ADJUSTMENT**

**Meeting Date: July 14, 2011**

**Initiated By: /s/ Alisha Reis  
Dept: Administration**

**AGENDA ITEM:**

Approval of findings re: setback variance request by Paul Rewinkel, 259 W. 4<sup>th</sup> Street

**SUMMARY:**

The Board approved the setback variance request by Paul Rewinkel (259 W. 4<sup>th</sup> Street) at its May 19<sup>th</sup> meeting. The attached Findings and Decision on the item have been drafted for the Board to review and adopt if accurate.

**ALTERNATIVES:**

- 1) Approve findings
- 2) Do not approve findings, identify inaccuracies

**ATTACHMENTS:**

Findings and Decision

NEDERLAND BOARD OF ZONING ADJUSTMENT  
TOWN OF NEDERLAND, COLORADO

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In Re: Application of Paul Rewinkel (259 W. 4<sup>th</sup> Street) for a front yard setback variance

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**FINDINGS AND DECISION**

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THIS MATTER COMES before the Town of Nederland Board of Zoning Adjustment (the "Board") upon the application of Paul Rewinkel ("Applicant") for a front yard setback variance in the Medium Density Residential (MDR) zone district located at 259 W. 4<sup>th</sup> Street in Nederland, Colorado (the "Property"). The Board, having conducted the required public hearing and being fully advised in the matter, enters the following Findings and Decision.

**FINDINGS**

1. The front yard setback applicable to the Property is twenty-five feet (25'). The Applicant has requested a variance from this setback requirement to permit the construction of a single-family residence utilizing two existing foundations on the Property, one of which is currently located within the setback.
2. On or about May 2, 2011, the Applicant submitted a variance application, including all maps, plats and exhibits thereto (the "Application").
3. The Application proposes to reduce the front yard setback to approximately seven feet, three inches (7'3") to permit the proposed single-family residence to extend approximately seventeen feet, nine inches (17'9") into the generally-applicable setback.
4. Nederland Municipal Code (the "Code") Section 16-233 requires the Board to conduct a public hearing on any variance application. After due and proper notice, the Board conducted a public hearing on the Application on May 19, 2011.
5. At the hearing, the Application was received into evidence, including a May 2, 2011 letter from Mark Cohen, the Applicant's legal counsel.
6. The May 2 letter from Mr. Cohen asserts, among other things, the following:
  - a. The existing structure on the Property was built as a summer cabin sometime before 1930, prior to the enactment of the Town's current setback requirements and, more than likely, prior to West 4<sup>th</sup> Street being improved to its current width.
  - b. Other residences on the north side of West 4<sup>th</sup> Street occupy the setback in the same manner that the Applicant requests.
  - c. The Applicant proposes to incorporate and improve the two small structures currently existing on the Property and on an adjacent lot, also owned by the Applicant<sup>1</sup>,

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<sup>1</sup> The Applicant has received Town approval to consolidate these two adjacent lots (259 and 261 W. 4<sup>th</sup> St.); approval of that lot consolidation was expressly conditioned on approval of this variance request.



into a new single-family residence. For a number of reasons, the Applicant believes it is not economically feasible to completely remove the two existing structures and build a new structure on the Property from the ground up.

d. The Property and the adjacent lot have a significant rise in elevation.

e. If forced to comply with the existing setback, the Applicant would be forced to remove many of the existing mature trees, shrubs and ground cover on the Property and the adjacent lot.

f. The Applicant did not locate the two existing foundations on the Property and the adjacent lot. The Applicant asserts that a former Town Administrator authorized him to improve upon the existing south foundation.

g. Permitting the Applicant to use the existing foundations and construct the residence as proposed in the Application would place the new home in line with the south walls of two residences to the east of the Property. Permitting the residence as proposed would therefore neither alter the character of the neighborhood nor impair the use or development of adjacent properties. Permitting the residence as proposed would substitute an attractive single-family residence on a conforming lot for two unattractive dated structures on two nonconforming lots.

h. The variance requested by the Applicant is the least variance required to permit him to construct the residence as proposed.

7. The Applicant testified before the Board in support of the Application. He testified that the May 2 letter from Mr. Cohen accurately states his position.

8. Leonard Kottenstette testified that the Property has been a thorn in the side of its neighbors for quite some time. Mr. Kottenstette testified that he believed the Applicant and his predecessor-in-interest, Cherry Creek Mortgage, knew of the limitations of the Property before each acquired it. Mr. Kottenstette stated that he understood and agreed with the concept of nonconformity, but he believed that the improvements proposed by the Application were too significant and extensive to qualify as nonconforming.

9. Board member Davenport asked the Applicant if the proposed residence would violate lot coverage requirements. The Applicant testified that it would not. The Applicant answered a number of other Board questions about the Property and the proposed construction project. The Applicant summarized that the variance request arose out of the unique topography of the Property and the adjacent lot as well as financial considerations.

10. The Board asked Staff for input. Town Administrator Alisha Reis testified that she believed that three of the five variance criteria set forth in the Code were possibly met by the Application. Reis further testified that the Town viewed the entirety of the proposed project (including the associated lot line dissolution) as a positive solution to properties that have presented a number of unique challenges.

11. The Board closed the public hearing.

12. Code Section 16-232(a)(1) authorizes the Board to approve a variance from the strict application of the provisions of Chapter 16 of the Code (the Town's zoning regulations) when the Board finds that 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 [Chapter 16];
- 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 [Chapter 16's] provisions which are in question.

13. Based upon the testimony and evidence received at the hearing, the Board makes the following findings with respect to the Application's compliance with Code Section 16-232(a)(1):

- a. Criteria "a" may or may not be met; there are steep slopes on certain areas of the Property.
- b. The unique topography of the Property may render it difficult to develop the Property in conformance with Chapter 16. Development of the Property without a variance might be so expensive as to be "unreasonable."
- c. The Applicant may have been aware of the hardships of the Property when he purchased it. However, the Applicant is pursuing an overall solution to the hardship presented by the Property (through this variance and the lot line dissolution) that will result in a net benefit to the Town: a usable single-family residence on a conforming lot.
- d. The proposed residence would neither alter the essential character of the neighborhood nor impair the appropriate use or development of the Property. The proposed residence would, in fact, be in line with the location of other residences in the neighborhood.
- e. The proposed variance is the minimum variance that would afford the Applicant the opportunity to use the existing southern foundation.

## **DECISION**

Based upon the foregoing findings and its review of the entirety of the evidence and testimony presented at the public hearing, the Board hereby APPROVES the Application of Paul Rewinkel for a front yard setback variance in the MDR zone district located at 259 West 4<sup>th</sup> Street in Nederland, Colorado, as presented in the Application, on the following CONDITIONS: (1) off-street parking must be clearly delineated; and (2) the Applicant will use his best efforts to design and construct the new single-family residence within the footprint of the two existing foundations and the area between them.

APPROVED AND ADOPTED by the Nederland Board of Zoning Adjustment this 14<sup>th</sup> day of July, 2011.

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Ken MacFerrin, Acting Chair

ATTEST:

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Kristen Edwards, Clerk to the Board

CERTIFICATE OF MAILING

I certify that on July \_\_\_\_\_, 2011, a true and correct copy of the foregoing **FINDINGS AND DECISION** was placed in the United States mail, postage prepaid, and addressed to:

Paul Rewinkel  
2847 Ridge Road  
Nederland, CO 80466

With a copy to:

Mark Cohen  
The Cohen Law Group, P.C.  
110 Snyder Street, Second Floor  
P.O. Box 617  
Nederland, CO 80466

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**AGENDA INFORMATION  
MEMORANDUM  
NEDERLAND  
BOARD OF ZONING ADJUSTMENT**

**Meeting Date: July 14, 2011**

**Initiated By: /s/ Alisha Reis  
Dept: Administration**

**AGENDA ITEM:**

Approval of findings re: setback variance request by Jasbir Chahal, 24266 Highway 119.

**SUMMARY:**

The Board denied the setback variance request by Jasbir Chahal (24266 Highway 119) at its May 19<sup>th</sup> meeting. The attached Findings and Decision on the item have been drafted for the Board to review and adopt if accurate.

**ALTERNATIVES:**

- 1) Approve findings
- 2) Do not approve findings, identify inaccuracies

**ATTACHMENTS:**

Findings and Decision

NEDERLAND BOARD OF ZONING ADJUSTMENT  
TOWN OF NEDERLAND, COLORADO

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In Re: Application of Jasbir Chahal (24266 Highway 119) for a front yard setback variance

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**FINDINGS AND DECISION**

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THIS MATTER COMES before the Town of Nederland Board of Zoning Adjustment (the "Board") upon the application of Jasbir Chahal ("Applicant") for a front yard setback variance in the Mountain Residential (MR) zone district located at 24266 Highway 119 in Nederland, Colorado (the "Property"). The Board, having conducted the required public hearing and being fully advised in the matter, enters the following Findings and Decision.

**FINDINGS**

1. The front yard setback applicable to the Property is thirty feet (30'). The Applicant has requested a variance from this setback requirement to permit the construction of a roof cover, or porch, over the front entrance to the single-family residence on the Property.
2. On or about April 19, 2011, the Applicant submitted a variance application, including all maps, plats and exhibits thereto (the "Application").
3. The Application proposes to construct a roof cover of approximately eight feet (8') which would protrude approximately seven feet (7') into the required front yard setback area. Section 16-74 of the Nederland Municipal Code (the "Code") permits projections from buildings to extend not more than three feet (3') into required setback areas. The Applicant is therefore requesting an additional approximate four feet (4') of variance.
4. Code Section 16-233 requires the Board to conduct a public hearing on any variance application. After due and proper notice, the Board conducted a public hearing on the Application on May 19, 2011.
5. At the hearing, the Application was received into evidence.
6. The Application asserts that the single-family residence was constructed at its current location due to unique topographical characteristics of the Property, such as the path of run-off from the highway, the varying grade and slope and the composition of soil at various locations on the Property. The Application asserts that the Applicant had no choice but to locate the home where it is.
7. The Application further asserts that the location of the front door of the home presents two on-going safety issues that would be mitigated by the construction of a porch: snow and ice accumulate at the front door and on the front steps; and large icicles form right above the front door. The Application notes that a porch would also permit the installation of a handrail for the front steps.
8. The Application finally asserts that the proposed porch would permit the home a small bit of privacy from the adjacent highway.