



# **Town of Nederland Board of Zoning Adjustment**

## **AGENDA**

**Thursday, August 4, 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 July 14, 2011**
- 4) Scheduled Business**
  - a. Consideration of a height variance request by the Town of Nederland re: installation of a solar panel array on the Community Center roof (750 Highway 72 North).
- 5) Other business**
- 6) Adjournment**



# Town of Nederland Board of Zoning Adjustment

## MINUTES

Thursday, July 14, 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 7:12 pm.

### 2) Roll Call

Present: Board Members Debbie Davenport, Mark Moll and Ken MacFerrin (Acting Chair)

Absent: Chairman Mark Stringfellow; Alternate Member Roger Cornell

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

### 3) Approval of minutes from May 19, 2011

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

### 4) Scheduled Business

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

The Board agreed they had reviewed the findings and had no comments or concerns.

A motion to approve the findings re: the setback variance request by St. Rita's Church (326 Highway 119) was made by Board

Member Moll, seconded by Board Member Davenport and approved unanimously by a roll call vote.

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

The Board agreed they had reviewed the findings and had no comments or concerns.

A motion to approve the findings re: the setback variance request by Paul Rewinkel (259 W. 4<sup>th</sup> Street) was made by Board Member Moll, seconded by Board Member Davenport and approved unanimously by a roll call vote.

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

The Board agreed they had reviewed the findings and had no comments or concerns.

A motion to approve the findings re: the setback variance request by Jasbir Chahal (24266 Highway 119) was made by Board Member Moll, seconded by Board Member Davenport and approved unanimously by a roll call vote.

- d. Consideration of recommendation to reappoint Mark Moll to the BZA

After minimal discussion and no dissention, a motion to recommend reappointment of Mark Moll to the BZA was made by Board Member Moll, seconded by Board Member Davenport and approved unanimously by a roll call vote.

## **5) Other business**

The group discussed possible dates for the meeting that will need to be scheduled in August. Edwards will connect with absent members and circulate the best dates to the group.

Administrator Reis gave an update on the Board's request to have a clarification of variance criteria dynamics. The Town Attorney has reported that as written, the code could have varying interpretations. Reis will be working with the Town Attorney to generate clear

alternative options for discussion and deliberation by the BZA and the BOT.

**6) Adjournment**

A motion to adjourn was made by Board Member Moll, seconded by Board Member Davenport and approved unanimously by a hand vote at 7:24 p.m.

TOWN OF NEDERLAND

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Ken MacFerrin, Acting Chair

ATTEST:

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Kristen Edwards, Deputy Town Clerk



# AGENDA INFORMATION MEMORANDUM NEDERLAND BOARD OF ZONING ADJUSTMENT

Meeting Date: August 4, 2011

Initiated By: /s/ Alisha Reis  
Dept: Planning & Zoning

## AGENDA ITEM:

Consideration of a height variance request by the Town of Nederland re: installation of a solar panel array on the Community Center roof (750 Highway 72 North).

## SUMMARY:

The Town of Nederland has submitted a request for a height variance in order to construct an array of solar panels on the roof of the Community Center. A building permit to that effect was submitted to the Town by Lighthouse Solar (contractors) but put on hold when the need for a variance was discovered.

The property is zoned Medium Density Residential, where the maximum building height requirement is 35 feet. The Town Attorney acknowledged that the code is unclear as to whether the maximum building height (as measured to the highest point of the roof) is intended to apply to structures on top of the building. Her recommendation, given the lack of clarity, was to apply for the variance, but she recommended that the code be clarified (possibly with a 'structure height' component) moving forward.

The Community Center's height varies but is approximately 35 feet at the proposed location of the array. The panels measure 9'3" in height, so the total combined height is approximately 44'3". The proposed array would be constructed parallel and proximate to a similar existing array already on the roof. The height of the new array will be within an inch of the height of the existing array.

Nederland Municipal Code Section 16-232(b) states: "Where feasible, the Board may vary or modify the application of this Chapter for the purpose of considering access to sunlight for solar energy devices." This is distinct from the more common variance application in circumstances of difficulty or hardship that is governed by Section 16-232(a); as such, the five "hardship

criteria” do not apply. The attached memo from the Town Attorney explains the process and criteria applicable to applications for solar energy device variances.

**ALTERNATIVES:**

- 1) Approve the variance request
- 2) Deny the variance request

**ATTACHMENTS:**

- 1) Variance application
- 2) Rendering of proposed project
- 3) Public notice address list
- 4) Memo from Town Attorney re: solar energy device variance applications

**FINANCIAL CONSIDERATIONS:**

None



**Application for Zoning Variance**  
**Board of Zoning Adjustment**

Town of Nederland  
45 W. 1<sup>st</sup> Street, PO Box 396, Nederland CO 80466

Name: Town of Nederland  
Address: 45 W 1<sup>st</sup> St / PO Box 396 Nederland CO 80466  
Phone: (Home) 303-258-3266 (Work) \_\_\_\_\_  
Email kristene@nederlandco.org Date of Application: 7/15/11  
Address and location of property: Street Address 750 Hwy 72 W  
Block \_\_\_\_\_ Lot \_\_\_\_\_ Subdivision \_\_\_\_\_ Zoning MDR

If applicant has applied for a building permit, please complete the following section:

Date of building permit application: 6/22/11  
Date building permit denied: put on hold - 7/5/11  
Reason for denial of permit: Total height of bldg + panels is in excess of 35 foot height restriction

**In addition to completing the form above, applicants must submit the following:**

- A hardship statement explaining the situation and the reason for the variance request. The explanation should include any unique circumstances or physical features of the property which might justify granting the variance
  - o Can be in the form of a letter addressed to Zoning Administrator Alisha Reis
- A set of mailing labels of all property owners and addresses within 300 feet of the boundaries of the property in question. This can be obtained
  - o from the Boulder County Assessor's Office (303) 441-3530 for a fee; or
  - o using the 'buffer' tool on the e-mapping section of the Assessor's website: <http://maps.bouldercounty.org/boco/emapping/>
    - This tool will generate a list of the required properties, which can be exported into a CSV file & printed onto mailing labels
- A plat map or survey of the property in question
- Check or cash for non-refundable application fee, as follows:
  - o Tier 1) General variances - \$500
  - o Tier 2) Detached structures less than 200 square feet - \$250
  - o Tier 3) Projects resulting in energy use reduction - \$200  
(i.e. solar panels, wind generators)

Upon receipt of a completed application, the Zoning Administrator will schedule a hearing with the Board of Zoning Adjustment. 15 days prior to the hearing, the applicant is responsible for posting a sign/signs on the property in question announcing the hearing. There must be one sign facing each public street adjacent to the property, and signs must be large enough to be read by a person in a passing vehicle.

Please see the attached sections of the Nederland Municipal Code (Section 16-232 & 16-233) explaining the criteria the Board of Zoning Administration uses to make its determination as well as the procedure surrounding the hearing.

If you have questions regarding this application or the subsequent process, please contact Deputy Town Clerk Kristen Edwards at (303) 258-3266 x22 or [kristene@nederlandco.org](mailto:kristene@nederlandco.org)

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For Use by Zoning Administrator

	Yes	No
<u>Included with application</u>		
Hardship statement:	<u>n/a</u>	<u>      </u>
Mailing labels for adjacent properties:	<u>✓</u>	<u>      </u>
Plat or survey of property in question:	<u>n/a</u>	<u>      </u>
Application fee:	<u>n/a</u>	<u>      </u>

Date complete application received: 7/15/11

Date of the Board of Adjustment hearing: 8/4/11

Public notice deadline: n/a

Date letters sent to adjacent property owners: 7/27/11

Board of Zoning Adjustment decision: Approved        Disapproved       

Reason for decision: \_\_\_\_\_  
\_\_\_\_\_

Date certificate issued by Zoning Administrator: \_\_\_\_\_

Signed:

\_\_\_\_\_  
Zoning Administrator

\_\_\_\_\_  
Chair, Board of Zoning Adjustment



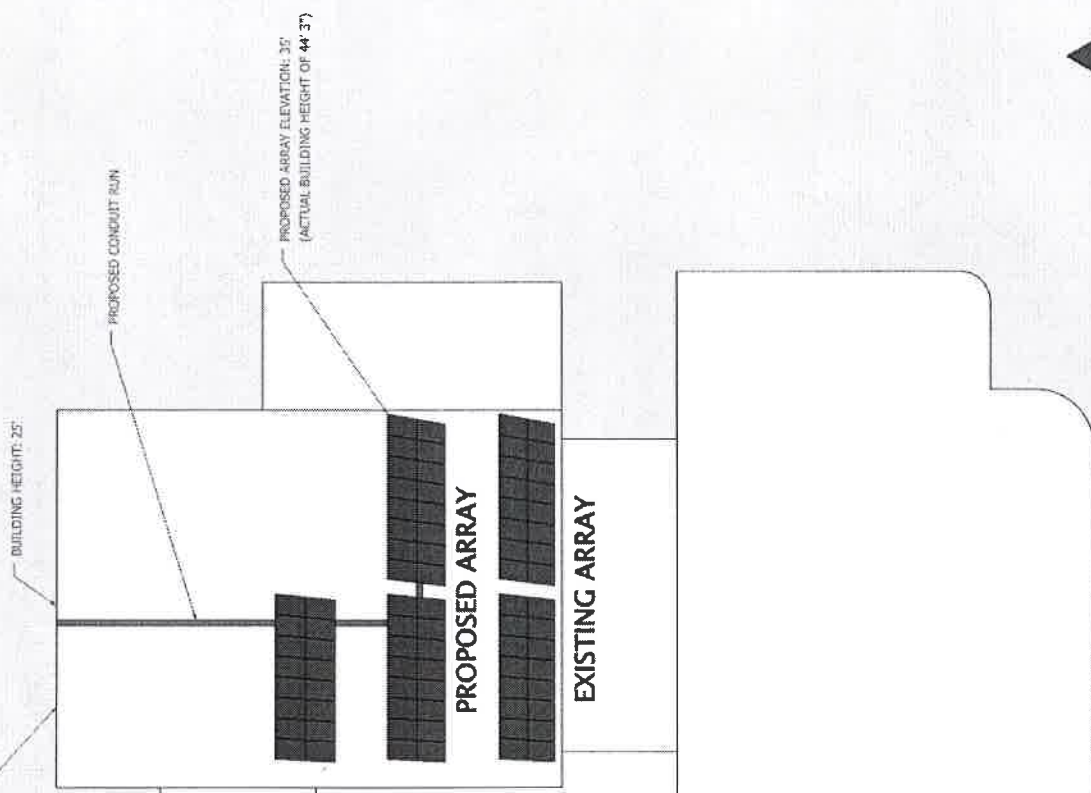
Nederland Community Center

750 Highway 72

Nederland CO 80466

(9.8) kW Grid Interactive PV System

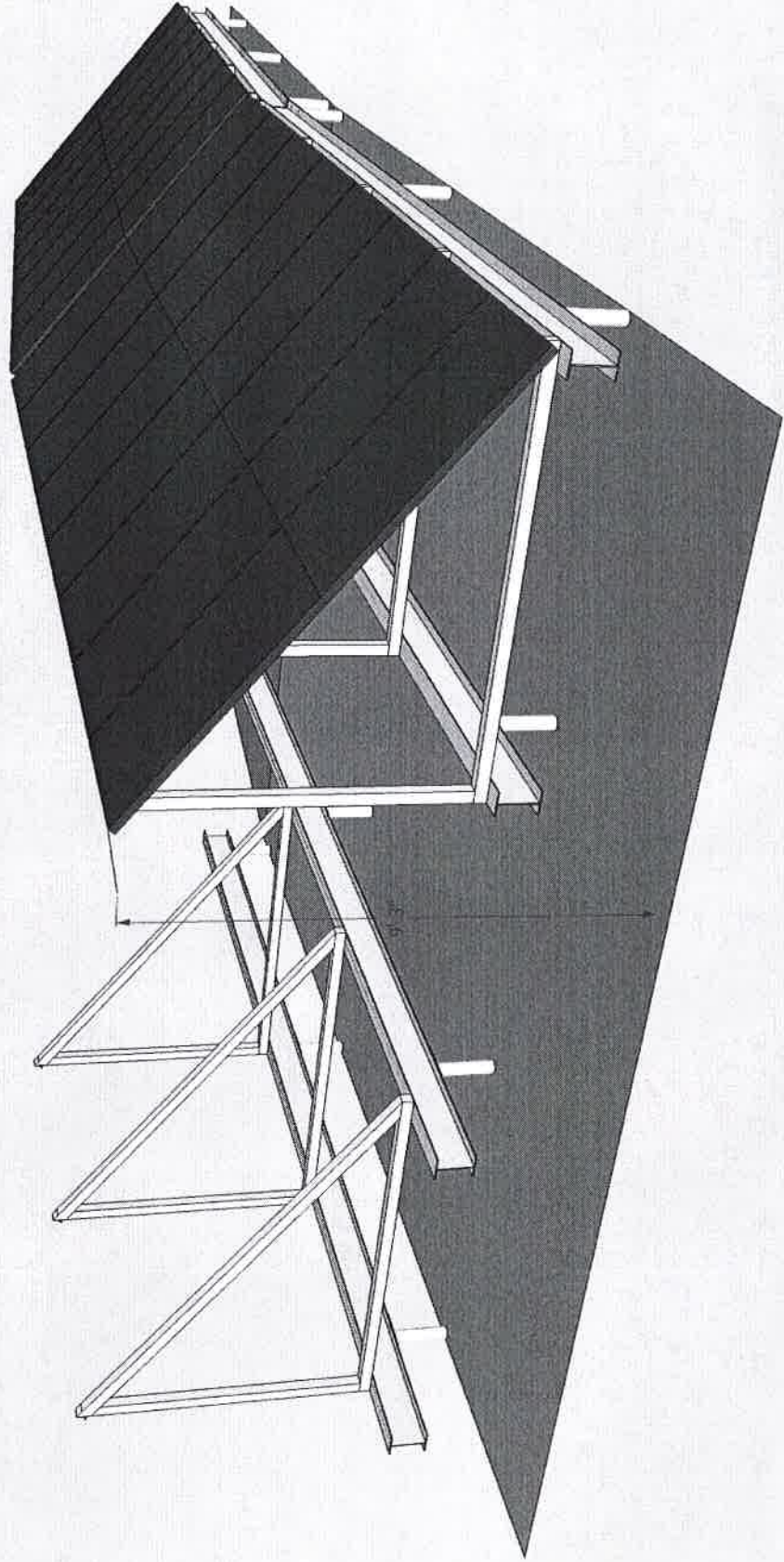
- METER / MAIN DISCONNECT LOCATION
- 800 AMP MAIN DISCONNECT
- INVERTER, PV PRODUCTION METER, AC LOAD PANEL LOCATION
- ELECTRICAL INTEGRATION METHOD: LINE SIDE TAP



- NOTES:
- THE NEW ARRAY INTEGRATE WITH EXISTING STANDOFFS PROVIDED BY OTHER
  - PV COMBINER BOX WILL BE MOUNTED ON THE BACK SIDE OF THE NEW ARRAY
  - CONDUIT WILL BE ROUTED 5 1/2" ABOVE IN A SEAL CONDUIT TO THE POINT OF INTERCONNECTION
  - ALL STEEL BRACKETS WILL BE FIELD PAINTED TO MATCH EXISTING ARRAY
  - ALL CONSTRUCTION WILL COMPLY WITH RECOMMENDATION MADE BY ASCENT ENGINEERING



Nederland Community Center  
750 Colorado 72  
Nederland CO 80466  
9.87 kW Grid Interactive PV System



ARNOLD HARVEY A  
PO BOX 3225  
NEDERLAND, CO 80466

DEMPSEY JOHN M  
4692 GORDON DR  
BOULDER, CO 80305

HAMILTON FAITH ET AL  
2825 5TH ST  
BOULDER, CO 80304-3005

ASTIN JAN K & JARAD G &  
CHRISTEL R  
175 BEACH 124th STREET #2  
ROCKAWAY PARK, NY 11694

DUEY WILMA L LIFE ESTATE ET AL  
PO BOX 430  
PLATTSMOUTH, NE 68048-0430

HANNA LYN S  
PO BOX 1225  
NEDERLAND, CO 80466-1225

BORSA VALERIE  
PO BOX 187  
NEDERLAND, CO 80466

DUNN TAMARA L  
PO BOX 1294  
NEDERLAND, CO 80466

HIGH STREET CONDOS LLC  
PO BOX 1514  
LONGMONT, CO 80501

BRENDLE DOUGLAS A & JENNIFER  
A  
1 NAVAJO TRAIL  
NEDERLAND, CO 80466

EBERSOLE HAROLD P  
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EAGLE RIVER, AK 99577

HIGH STREET CONDOS LLC  
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BUCK ARDEN L  
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EMERLING DOROTHY E  
PO BOX 626  
NEDERLAND, CO 80466

KELLY SUSAN DIANE & ALLAN V  
SMITH  
PSC #3 BOX 1665  
APO, AE AEO9021

CAMP JASON R  
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NEDERLAND, CO 80466

ERSOZ MERYEM C  
740 13TH ST  
BOULDER, CO 80302

KOTTENSTETTE LEONARD & MJC  
PO BOX 746  
NEDERLAND, CO 80466

CAREY RICHARD T  
3003 VALMONT RD LOT 218  
BOULDER, CO 80301

GAUGGEL KARL HERMANN  
706 W MAIN ST  
MUNCIE, IN 47305-1534

KRUGMAN KIMBERLY & MICHAEL T  
GOHO  
PO BOX 544  
NEDERLAND, CO 80466-0544

COHEN LAW GROUP THE PC  
PO BOX 617  
NEDERLAND, CO 80466-0617

GLASSER DAN A & LINDA  
RYPLEWSKI  
PO BOX 394  
NEDERLAND, CO 80466

LARSON ALICIA  
C/O BANK OF AMERICA / TAX DEPT  
SV3-24 PO BOX 10211  
VAN NUYS, CA 91410-0211

COX TAD RYAN  
PO BOX 1876  
NEDERLAND, CO 80466

GLASSER DIANA K  
819 ROCKWAY PL  
BOULDER, CO 80303

LEM/HMM LLC  
541 SPRUCE ST  
BOULDER, CO 80302-5015

DAVIES ANDREW J  
4404 WOLFF ST  
DENVER, CO 80212

GUERCIO JAMES WILLIAM  
C/O CARIBOU CO 1300 WALNUT ST  
STE 200  
BOULDER, CO 80302

LOPITZ PETER II & JANICE LOPITZ  
ET AL  
3842 WONDERLAND AV  
BOULDER, CO 80304

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PO BOX 73064  
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POWELL IAIN IRWIN & SARAH  
IRWIN  
PO BOX 1410  
NEDERLAND, CO 80466

WILD BEAR SCIENCE SCHOOL INC  
PO BOX 3017  
NEDERLAND, CO 80466

LYNDS SUSAN E  
PO BOX 657  
NEDERLAND, CO 80466-0657

REWINKEL PAUL J  
2847 RIDGE RD  
NEDERLAND, CO 80466

MANTIFEL JANA M & PATRICIA M  
BOBBITT  
PO BOX 101  
NEDERLAND, CO 80466

SHAW MICHAEL W & CATHERINE  
ROBLES SHAW  
PO BOX 3260  
NEDERLAND, CO 80466

MARGARET A MCMULLEN TRUST  
8038 S LEYDEN ST  
CENTENNIAL, CO 80112-3059

SHRUM AMY T  
PO BOX 1537  
NEDERLAND, CO 80466

MATTHEWS JAMES C/O SUMMIT UP  
PO BOX 107  
BLACK HAWK, CO 80422

SLAVICK STEPHANIE A & JOSEPH P  
GIERLACH  
PO BOX 361  
NEDERLAND, CO 80466

MAURER LAWRENCE E  
PO BOX 1638  
NEDERLAND, CO 80466-1638

SPRATFORD KATHY L  
PO BOX 373  
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500 MANHATTAN DR D9  
BOULDER, CO 80303

STEVENS JAMES A & DEBORAH J  
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MCDONALD JO & DAVID VOGELI  
PO BOX 883  
NEDERLAND, CO 80466

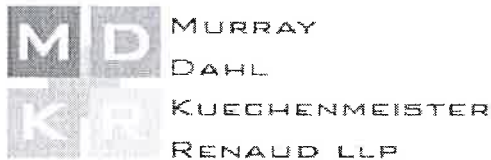
VAN PELT TYLER  
12 DARTMOUTH ST  
EDISON, NJ 837

MONNIG BRYANT B  
27 LONGSFORD  
SAN ANTONIO, TX 78209

WELDEN MARK C FAMILY TRUST  
PO BOX 3155  
NEDERLAND, CO 80466

PAYNE JULIE A & ANDREW R  
GRAUCH  
2650 9TH ST UNIT 102  
BOULDER, CO 80304

WHIPPLE SUSAN JEANETTE  
295 E SUTTON CIR  
LAFAYETTE, CO 80026



## MEMORANDUM

**TO:** Members of the Nederland Board of Zoning Adjustment  
**CC:** Alisha Reis, Town Administrator  
Kristen Edwards, Clerk to the Board  
**FROM:** Carmen Beery, Town Attorney  
**DATE:** July 25, 2011  
**RE:** Solar Energy Device Variances: Process and Criteria

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This memorandum sets forth the process and criteria applicable to applications for solar energy device variances. Nederland Municipal Code (“Code”) section 16-232(b) provides:

Where feasible, the Board may vary or modify the application of this Chapter for the purpose of considering access to sunlight for solar energy devices.<sup>1</sup>

This authorization to approve variances is separate and distinct from the authorization found in subsection (a) to approve variances “where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of [Chapter 16].”

The Board is therefore authorized to issue variances in two instances: (1) upon a demonstration of hardship, and (2) for the purpose of considering access to sunlight for solar energy devices. For the former type of variances, the Board is guided by specific criteria to help determine whether a legal “hardship” exists. Code Sec. 16-232(a)(1). For the latter type of variances, the Code does not provide specific criteria to aid the Board’s fact-finding and decision-making.

As you are guided only by the plain language of Code Sec. 16-232(b), you should consider whether it is “feasible” to vary the provisions of Chapter 16 for the purpose of providing access to sunlight for a particular solar energy device. The Code does not require you to find all the “hardship” criteria of Code Sec. 16-232(a)(1) *and* that the variance would increase access to sunlight for a device. If that had been the intent, the Code would read something like, “in addition to those criteria set forth in (a)(1), the Board may vary the application of this Chapter for solar devices when it finds that...” or something similar. But the plain language of the Code does not require the Board to make hardship findings in the context of solar device variances.

You may wish to recommend to the Board of Trustees that they amend Code Sec. 16-232(b) to provide some additional criteria for solar device variance approval. Criteria to consider might include, for example, consistency with the Comprehensive Plan, appropriate size/type to the character of the neighborhood and surrounding uses, and no significant impairment of adjacent properties’ access to sunlight. While one could argue that these type of criteria are implied, the Board cannot impose implied criteria upon a site-specific land use application. It would be improper to impose what one believes the Code “should” say in lieu of what it does say. I realize that you would not have much guidance in considering an application under Code

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<sup>1</sup> This Code language is pulled directly from state law: C.R.S. § 31-23-307(4).

Sec. 16-232(b) as currently written. If I can assist you in proposing any particular Code amendment to the Board of Trustees, please don't hesitate to ask.

The process for considering a solar energy device variance is the same as the process for hardship variances. Code Section 16-233 governs the process. Neighboring properties have a right to receive notice of the hearing and be heard on the application. The affirmative vote of four (4) Board members is required to approve the variance. Code Section 16-231(c).

As always, please let me know if I can be of further assistance.