



# Nederland Planning Commission

## MINUTES

Wednesday, August 27, 2014 ~ 7:00 pm

Nederland Community Center

750 Highway 72 North

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### 1. CALL TO ORDER

Chairman Cornell called the meeting to order at 7:02pm.

### 2. ROLL CALL

**Present:** Chairman Cornell, Vice Chairman Williams, Commissioners Stephanie Herring, Mikki Osterloo, and Betty Porter

**Absent:** Trustee Liaison Donahue Lisa Mayhew (submitted letter of resignation).

**Also Present:** Town Administrator Alisha Reis, Deputy Clerk Cynthia Bakke

Chairman Cornell noted that Commissioner Mayhew will be out of state until December, and thus submitted her resignation. Cornell said that the Board of Trustees (BOT) approved an additional Commissioner to allow for 8 total members, including the BOT Liaison. As such, the Commission has 2 vacancies to fill.

Timmy Duggan of Nederland and a Boulder-native, is retired from Olympic-level cycling and now completing requirements to become a real estate agent. He said he's honored to be considered for the position, eager to learn and passionate about the community. Commissioner Porter asked if there is concern about conflict of interest due to his job. Chairman Cornell said as an agent it may or may not be a conflict, but if Duggan is representing a property, he'd have to recuse himself, which Duggan affirmed. Reis said it would be application-dependent, and all are reviewed by staff and legal on a case-by-case basis.

**Motion to recommend approval of Timmy Duggan for the Planning Commission made by Vice Chairman Williams, seconded by Commissioner Porter, all in favor.** The Board of Trustees will consider this item on September 16.

### 3. APPROVAL OF MINUTES from July 23, 2014

**Motion to approve July minutes as written made by Commissioner Herring, seconded by Vice Chairman Williams, 4 in favor, 1 abstention by Osterloo, who was absent from this meeting.**

#### **4. PUBLIC COMMENT**

There was no public comment.

#### **5. INFORMATION ITEMS**

There was no public comment not pertaining to Agenda items.

#### **6. ACTION ITEMS**

##### **1. Consideration of Special Review Use (SRU) application by Wendy Williams for a multifamily residence at 439 W. 3<sup>rd</sup> Street.**

Reis introduced the item. The application proposes to convert an existing single-family residence to a duplex, located in the Neighborhood Commercial (NC) district, a use allowed by SRU. The requirement for on-site parking for a multi-family residence is to provide one (1) space per bedroom. Williams proposes to have a total of 4 bedrooms, with equivalent parking spaces.

Williams discussed her proposal for the multi-family residence, an 881 square-foot addition to create an adjoining, separate residence with 2 bedrooms, kitchen, living room and a bathroom. She said that the project complies with every applicable code requirement, and her application supports Nederland Design Standards, as well as the Comprehensive Plan by infill development within a walk-able location.

Chairman Cornell asked about the lots involved in the parcel, as the map shows 5 lots. Williams clarified that the property consists of 4 lots, as the 5<sup>th</sup> got mapped out. Reis noted that there no significant issues with the application, which is an existing house that straddles 2 lots, upon which they propose to build an addition.

Chairman Cornell asked about the shed on the property observed during a site visit. Applicant Williams said it is a shed, but noted that the SRU's focus is with lots 2 and 3. She said that there may be plans in the future regarding lots 1 and 4, though out of the scope of this special review. Vice Chairman Williams inquired if there are plans to dissolve lot lines, to which applicant Williams stated that there are none at this time.

**Chairman Cornell opened the public hearing portion. No comments offered from the public in attendance, thus Cornell closed the public hearing portion.**

Commissioner Herring asked for clarification regarding the parking as it intends to span all 4 lots. Applicant Williams said there is 1 space each upon lots 1 and 2, with 1 space each at the front of lots 2 and 3. If any future changes are to be made with Lot 1, they will redesign the parking to accommodate the duplex, stated applicant Williams.

Reis said that Williams needs to provide a total of 720 square-feet or (4) 9x20sf spaces for the standard parking requirement, a condition of the SRU Agreement.

Commissioner Herring asked for the parking context along this street. Reis said that very few town roads are to standard width, a particular issue for snowplowing

operations. She said that town staff reviews conditional uses, especially for multi-family or commercial development to ensure off-street parking is addressed. She said this neighborhood is receiving attention in planning and signage, due to parking issues associated with unpermitted nonconforming situations, garnering neighbor complaints.

Reis said that for multi-family units, the respective utilities will each be served by the same service, but with a separate meter. She delineated that the duplex would have a master service, but this would be separated if the units sold separately, akin to a condo agreement. She said that applicant Williams would be given credit for the existing tap size if upgrade necessary, or maintain current size, if sufficient.

**Motion to recommend approval of the multi-family SRU at 439 W 3<sup>rd</sup> Street, meeting criteria of NMC Sec. 16-55 made by Commissioner Porter, seconded by Commissioner Herring, with all in favor. Reis said the application will move to the BOT on September 16.**

**2. Consideration of Special Review Use application by Arthur Amacher for a multifamily residence at 253 W. 3<sup>rd</sup> Street.**

Reis introduced the item. She said that the home has been classed as a single-family residence, despite being used historically as an unpermitted multi-family residence. The proposed use does not meet the minimum lot size for the Medium Density Residential (MDR) district, however it is being forwarded due to its potential documented use as legally nonconforming, she said.

Reis described the property's history, with a Certificate of Occupancy indicating it is a single-family dwelling. An addition of 3 bedrooms and 3 baths in 2002 was likely when the multi-family transition took place, she said. The application proposes to formally permit the multi-family as 2 units, plus the separate studio/shed as a third unit, allowing a total of 6 bedrooms. She said that this property specifically contributes to on-street parking, with a condition of the SRU Agreement to ensure all parking to be contained on-site.

Property owner Arthur Amacher, of Nederland, said that he would like to bring the property into conformance, as well as allow much-needed rental housing in Nederland. He has been in the rental business for many years and gets numerous inquiries when listing the house for rentals, he said. He has worked to clean up the property and provide sufficient parking within his proposal, said Amacher. He noted that he is currently billed by the Town for 4 separate units for utilities.

**Chairman Cornell opened the Public comment portion of the hearing.**

Leonard Kottenstette, of Nederland, presented pictures he prepared of the property with specific focus upon the area's parking situation, noting that most of the pictures were taken in the last 2 weeks. He noted that the house has been an illegal multi-family unit for 12 years. He said he has reported issues such as on-street parking, dogs, and backyard bonfires many times with present and previous town staff, with no resolve until Code Enforcement began in 2014. He indicated that the proposal is not in

keeping with the neighborhood's character nor does it meet the minimum lot size requirements. Kottenstette questioned whether the single-family dwelling converted to a multi-family unit has proper fire rating as required.

May Jarrill, of Nederland, said that Amacher has a high standard of building and tenant management. She acknowledged that the removal of a smaller shed will better accommodate needed on-site parking. Jarrill said that she can empathize with Kottenstette as she has lived near the NedCompost operation at the Town shop for years, but added that it's a part of living in a town. She lauded Nederland's distinctive character, and said she favors approval of this SRU application. Amacher is resolving the parking situation and improving a property in poor condition when purchased, said Jarrill.

Jana Mantifel, of Nederland, said she has had concerns about this property for 10 years. She mentioned there is an existing parking problem on 4<sup>th</sup> Street already, notwithstanding use by tenants of 253 W. 3<sup>rd</sup> Street. She has confronted tenants of this property about parking on 4<sup>th</sup> Street, and asked the Commission to deny the application.

**Chairman Cornell closed the public hearing portion.**

Reis clarified the code allows for up to 4 unrelated adults to reside in the same house. She said that rental licensing and enforcement will begin in January 2015. Reis said that Amacher's application proposes 3 rental units, which the Commission can vote to approve or deny as presented, approve with additional conditions, or minus the studio/shed unit in their recommendations. She added that on-site parking is required, which may necessitate additional measures to ensure parking does not stray from the site.

Chairman Cornell inquired as to when the shed became a home, and if a Certificate of Occupancy was issued. Amacher said that the studio was added onto the meter of the house, and was there under his previous ownership of the property in 2003. The property file contains no record of approval or C.O. issuance for the shed, said Reis. Amacher suggested that an additional inspection can be conducted to approve the studio as a residence. Cornell said that the 11,000-square foot parcel size does not meet zoning requirements of the MDR district to accommodate the proposed multi-family units, in addition to providing requisite on-site parking.

Amacher said when he initially purchased the home in 2003, and the addition and studio/shed were existing structures. He said he bought the house again, knowing that it is classed as a single family home, with potential multi-family allowance via SRU. He noted that the property's condition implies neglect by the previous owner.

Reis said the town has taken a proactive approach with real estate agents that have marketed the home as a multi-family unit. The property file included a 2013 letter clarifying the SRU requirement for allowance of multi-family residences.

Vice Chairman Williams asked if studio is in conformance with setbacks. Commission discussion ensued about whether setbacks are considered for principal or accessory use regarding the studio/shed. Amacher said that the layout of the house favors smaller units, noting that there will be multiple tenants as long as it is a rental unit. Vice Chairman Williams inquired about further renovation to create separate units. Amacher stated that he does not intend to further alter the house.

Commissioner Porter asked if Amacher took on tenants when he bought the property. Amacher responded that there were no tenants at the time of purchase. Porter mentioned complaints submitted in the last 6 months under present ownership, along with neighbor complaints of the previous decade. Amacher said that there is still cleanup necessary on the property. He said that open parking along town roads may or may not be tenants of this house.

Chairman Cornell asked if the application complies with NMC Sec. 16-33, due to the district's minimum lot size requirements. He listed requirements for approval, asking the Commission to consider if met, or if approval will necessitate proposal changes.

Commissioner Porter inquired about the roommate allowance under NMC Sec. 16-6 Definitions (Family) of 4 unrelated adults in a dwelling unit, is relevant to house size. Reis confirmed that this allowance is the same regardless of the structure size, noting that maximum occupancy can be included as a condition of the SRU Agreement.

Commissioner Osterloo asked about making parking passes. Reis acknowledged this could be an option if the town had more right-of-way space. The rental code will have to be reviewed, with assistance from rental licensing and enforcement, said Reis. She added that the SRU Agreement can include a condition of maximum occupancy.

Noting the nonconformance of the studio/shed, Commissioner Herring asked if the house itself as 2 units would be conforming to the code. Reis responded that the home still would not be strictly conforming, as the lot size is too small for the two units, but she acknowledged the code allowance for continuation of a non-conforming residential use under certain circumstances. The town has many cases of a similar nature involving large houses utilized as unpermitted multi-family structures. Reis conceded that this may warrant a legislative policy instead of the current process of individual review.

Chairman Cornell indicated the nonconforming studio/shed may contribute to the opposition presented earlier during the public comment portion. He said that the fire code regulations and rental licensing can be addressed via code enforcement. Amacher stated that fire walls were made at the time of the large addition construction.

Commission discussion concluded the need to eliminate the studio/shed from the proposal, with the multi-family unit contained in the house. Commissioner Porter noted that Amacher has had only 6 months to remedy damage from the previous tenants.

Commissioner Herring acknowledged the historic usage; however, she said that more parameters need to be in place for a comprehensive review for applications with similar nonconformance. She suggested limiting occupancy as an SRU condition.

**Chairman Cornell reopened the public comment portion to allow additional comment for one minute.**

Amacher summarized that as a single family home with 5 bedrooms that there will be about the same amount of people living there. He added that there is a desperate need for smaller, more affordable units, and has had many inquiries about the studio.

Leonard Kottenstette said that even without inclusion of the studio/shed this SRU application does not meet minimum lot size requirements. He noted the possibility that sale of the house or future elimination of code enforcement will cause issues to persist.

May Jarrill said that the house meets requirements for setbacks and lot coverage. She said that ideally the SRU process would improve the property by increasing parking spaces and adding much-needed housing in town. Jarrill encouraged the Commission to move forward with approval for the pre-existing house.

Jana Mantifel stated that zoning for the house is as a single-family residence, along with the adjacent structures along the street. Mantifel said that the pictures submitted by Kottenstette demonstrate the use of parking upon 4<sup>th</sup> by 253 W. 3<sup>rd</sup> Street tenants.

Wendy Williams asked if approval would set a precedent for other residents in the town. She said she doesn't want to see the character of the neighborhood change into large multi-family units.

**Cornell closed the public hearing portion.**

Commissioner Osterloo suggested sticking to the code until directed to revisit the code by the Trustees. Reis noted that there are approximately 30-40 properties that would apply. Vice Chairman Williams acknowledged the additional burden upon staff for case-by-case reviews.

Commissioner Herring asked if a case can be made for existing homes as opposed to new development. Reis said that new development must be conforming; however, there is consideration for existing homes under the nonconforming use code.

Reis noted that the property in question has previously been used as 4 separate rental units, including 2 shed structures. She indicated that density and lot size per dwelling unit will be a consideration of the Commission, throughout the community, and especially within the Old Town area.

Reis said the acknowledgement of pre-existing use and structure can continue, provided the use is not abandoned for 12 months or more, the point being to try to reach a lesser nonconformance and to meet requirements otherwise.

Commissioner Herring acknowledged the need for affordable smaller units, noting the interesting balance of ensuring code compliance while supporting the Comprehensive Plan which specifies a need for housing.

Reis said a non-transferrable condition of the SRU Agreement can be included so that sale of the property would necessitate the new owners to reapply for this allowance. Vice Chairman suggested review of this application as well, to which Reis added that a conditional review at 12 months may also be a condition of approval.

Amacher indicated that the town is aware of the property's use as a four-plex being as he is being charged for 4 water uses.

Chairman Cornell acknowledged that the property has historical use as duplex or four-plex, and has been in use for at least 12 years. Commissioner Osterloo would support recommendation of a duplex with inspection in one year, depending upon BOT approval. Chairman Cornell said that he would support the application with conditions as a permitted nonconforming parcel.

Amacher said there are many houses with the same issue, and there should be a plan for resolution. He inquired if the town intends to shut all these multi-family residences down and how a large family would be able to provide ample parking. Reis said often times the parcel is larger to accommodate parking requirements.

**Motion to recommend to the BOT approval of the SRU Agreement for a duplex at 253 W. 3<sup>rd</sup> Street for a nonconforming use with a one-year review, non-transferrable, with all off-street parking, to meet all duplex codes, and exclusion of the studio/shed made by Chairman Cornell, seconded by Commissioner Porter, 4 in favor, with Vice Chairman Williams opposed. Reis said that the application will appear before the BOT on September 16.**

### **3. Municipal Code Review: Special Review Use/Home Occupations related to retail marijuana operation**

Reis introduced the item. She said that this was the BOT's consideration at the time with retail marijuana home occupation use. At the joint BOT/PC work session, it was decided to follow the existing code. She noted that within certain districts the intention was to treat medical and retail marijuana allowances similarly, as despite regulatory differences, the same issues are involved.

Medical marijuana edibles is use-by-right in the Central Business District (CBD), although not allowed under retail marijuana allowances. She said if they wanted to further streamline they could change categories, though this is how they are referenced.

Commissioner Herring said that she left the joint work session with the understanding that retail marijuana cultivation presents enforcement issues. Reis said the follow-up to the work session involved study regarding enforcement and discussed inspections during hours of operation, even for home occupations.

Commissioner Osterloo said in past discussion the Commission had put forward their recommendation of no allowance in the residential zones. Reis said that the Trustees are unwilling to undertake changes to the existing allowances, despite unanimous recommendations by the Planning Commission.

Commissioner Herring said she opposes special review use for marijuana testing facility in residential districts. Reis said she can put forward Chairman Cornell's recommendation to bring back before the Commission as a separate motion.

Reis said that building codes will have to be met to established to convert buildings into commercial grow operations, a significant expense that may be cost-prohibitive to most.

Commissioner Porter asked about changing the total floor area percentage for home occupations to 35% with a limit of square footage. Reis said this is possible, and noted that it will apply to all home occupations, whether marijuana use or not. Presently, the allowance is for 50% of total floor area.

Chairman Cornell said that the Police Department needs guidelines for enforcement. Reis said that there will be an enforcement program undertaken after October 1<sup>st</sup>, and that the caregiver loophole will need to be addressed. The Medical Marijuana Enforcement Division (MMED) is tackling the issue, but nothing is as-yet formalized, so is up to individual communities, she said. Reis noted that the 12 plant maximum is only limited in communities that have adopted this restriction. In Nederland's case, with the allowance for up to 4 unrelated adults, this would translate as a total of 24 plants. She said that they can recommend amendment to Ordinance 720, but recommended addressing this issue at a later time, as current retail applications require more expediency.

Reis clarified options for the Commission's recommendations, which can be forwarded as several motions.

**Motion to approve a change to NMC Sec. 16-76 from 50% total floor area to 35% floor area made by Commissioner Herring, seconded by Vice Chairman Williams, with all in favor.**

**Motion to recommend approval to draft an ordinance prohibiting all current marijuana cultivation allowances within the residential districts made by Chairman Cornell, seconded by Commissioner Porter, with all in favor.**

**Motion to recommend approval of changes to the use group allowances as referenced and attached. Motion made by Chairman Cornell, seconded by Commissioner Osterloo, with Chairman Cornell in favor, and 4 opposed.**

#### **4. Nederland Planning Process review for the Community Center Site Plan**

Reis introduced the item. This is the 30-year plan for the building and site, Reis



clarified, not a building/engineering plan, as it takes an expanded view. Though the discussion has been ongoing, the Town decided in 2010 to look beyond the west wing, addressing the site to enhance features, amenities, and increase usage, she said.

Reis said that the project committee studied the site context within the community to improve site features such as drainage, parking and traffic flow, and connection with the neighborhood. The plan has gone through numerous iterations, along with an advisory board summit, with the BOT seeking advisory board recommendations through the Nederland Planning Process. (NPP) The CCFB would raise the funds, and the plan gives a road map of enhanced facility and site usage, she said.

A request for civic presence proposes to relocate the Town Hall, and possibly the Police Department, which accrues monthly rent in its present location. The Civic space would be separated from the recreational area, as well as continue to be a place to seek aid, provide a community kitchen and offer on-site business uses. Per Reis, one of the big concepts is to have a one-way road to enter from and cycle off the south side of the site and around to Forest Road at the north end, as well as an updated entry feature oriented toward the highway. The existing biofuels area would be updated to be a non-profit hub that accommodates uses such as the community food project, NedCompost, and transit-oriented services, she said.

Reis said that a hydrology study and repair is expected in the first phase, while the town submits for 2<sup>nd</sup> round FEMA-funding to address existing issues. The parking lot is to serve as drainage basin, while the town and State Highway Department work together on a proposal for a crosswalk across the highway, she said.

Commissioner Porter noted that there are steps along the way to reprioritize areas of the project as needed. Vice Chairman Williams said it is important to consider whether the plan will be adequate for the community's need in 35 years.

**Motion to recommend approval to the BOT of the CC Site Plan as presented made by Commissioner Herring, seconded by Commissioner Porter, with all in favor.**

#### **G. DISCUSSION ITEM**

There were no discussion items.


#### **H. OTHER BUSINESS**

There was no other business.


**I. ADJOURNMENT**

**Motion to adjourn made by Porter, seconded by Williams, with all in favor.  
Meeting adjourned at 10pm.**

Approved by the Planning Commission,

  
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Steve Williams, Vice-Chairman, Planning Commission

ATTEST:

  
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Cynthia Bakke, Deputy Town Clerk