



April 6<sup>th</sup>, 2022

To: Chairman Shockey and Planning Commissioners  
From: Kim White, Town Planner

RE: **PUBLIC HEARING** – Consideration to adopt Resolution 06-2017; a resolution recommending approval for a new boatslip located at Lots 6, Shadow Point Subdivision, also known as 300 Lakeside Drive.

**Purpose**

The Town has received a request for a new boatslip at 300 Lakefront Dr. The request includes repairing existing stairs down to the water, excavating a boatslip in the back yard area and reinforcing it with poured concrete retaining walls with a stamped, integrated color-finish. The work is within the 30' shoreline setback and the walls are over the 6' allowable height without a variance (and up to 4' without being engineered by a Colorado Professional engineer), thus variances have been requested.

**Background:**

February- March 2017- Application was reviewed at a public meeting to request a boat slip.

April 11, 2017- Permit issued to install boat slip on. Applicants installed erosion control waddles and then paused the project, due to legal issues with neighboring HOA.

November 6<sup>th</sup>, 2018- The Chapdelaine's sent a letter to the Town, to request an extension, due to a legal matter that has since been resolved.

The Permit was eventually expired by the County in 2019.

July 7<sup>th</sup>, 2020 County re-issued the permit with a new permit number (B20-0296GL)

July, 7<sup>th</sup>, 2021, Staff contacted Devon Cotsamire, Recreation Special Uses Specialist in the Sulphur Ranger District and she said "We issued Chapdelaine a construction permit last year with a one year term, however due to the ET fire they pushed back construction to this fall. They have a current permit with the USFS. This is the first time I have seen these current plans and they appear to be different than the original plans that were approved last year.... We'll have to extend their current construction permit which expired in 2021. Or will issue another construction permit. It shouldn't be to much of a workload."

January 3<sup>rd</sup>, 2022 - Email received from Candace Knight Regulatory Assistant USACE  
"Attached is notification that a Department of the Army permit is not required for the Chapdelaine Boat Slip located along the entry channel to Shadow Mountain Estates Marina, at 300 Lakeside Drive, Grand



County, Colorado. This document is provided on behalf of Mr. Tyler Adams, Project Manager, Northwestern Colorado Branch, U.S. Army Corps of Engineers. Mr. Adams can be reached at 970-243-1199, ext. 1013.” (letter from the USACE attached).

January 7<sup>th</sup>, 2022, Applicant requested information on how to proceed with the building. Staff stated that the application has changed from the original building permit and new permit must be reviewed. Staff did not locate any shoreline variance on file for the project.

March 16<sup>th</sup>, 2022 - Applicants submitted completed application for building permit, shoreline variance, retaining wall height variance.

### **Municipal Code**

Municipal Code 12-2-29 Shoreline and Surface Water Regulations:

#### **(A) STREAM AND LAKE SETBACKS**

*1. In order to help preserve the environmental quality of the water in the Grand Lake, a thirty (30) foot stream and lake setback from the mean identifiable high water mark shall be maintained for buildings, parking, snow storage areas and other improvements to a site. ...*

*2. When activities are proposed within the 30’ setback, a variance may be requested by an Applicant.*

#### **9. RETAINING WALLS**

*(b) Height – Retaining walls may not exceed 6 feet in height and require a 4’ shelf between walls. Any walls exceeding 6’ will require a variance.*

### **Staff Analysis**

Upon review of original ecological assessment, the site has no significant habitat value to wildlife, including waterfowl, no fens, springs, or Critical Resource Waters, No proposed structures in the waterway and no existing structures.

The applicant has submitted all the required paperwork for the project. The applicant has stated they will be performing the work themselves, and have unstamped architectural drawings and minimal erosion control details. The proposed design has significantly changed from the originally approved design in every way except for the location of the boatslip. This includes the material, the erosion control detail, and the design of the soil retainage, leading Staff to require a new permit review and variance requests.

Per code 12-2-29 (B) Setbacks: All structures, including uncovered boat docks, shall meet the side setback requirements of the zoning district. Notwithstanding any other provision of this zoning code, freestanding uncovered docks, or docks attached to the sides of boathouses shall be allowed to encroach five (5') feet into the side setback requirements of the zoning district.

The proposal is a use by right in this single family high density zone and complies with most municipal code regulations pertaining to boatslip construction, including setbacks, and distances, as laid out in section 12-2-29. However, the walls of the boatslip are 8’ high. The code only allows for up to 4’ high walls without being engineered by a Colorado Professional Engineer; and up to 6’ foot walls without a



variance. The applicant's representative has also furnished the required supplemental information, including material and color samples, minimal erosion/sediment control details, and potential disturbed landscapes.

The excavation will create a large amount of cut soil to be transported offsite, with potential of erosion into the lake, as well as possibility of spill or contamination from concrete during the wall pour. Much detail to erosion control and containment is required to avoid any spill from occurring. The applicant has signed the required 404 permit disclaimer, agreeing to obtain the Army Corp of Engineers Permit. The applicant has obtained feedback from the USACE indicating that this is a non-discharge project in their opinion and does not require a permit.

Staff caused publication of this Public Hearing in the Middle Park Times and contacted the surrounding properties owners as required by the Municipal Code. The Town received zero (0) written comments regarding the application.

### **Commission Discussion**

The Commission should conduct the Public Hearing as follows:

1. Open the Public Hearing
2. Allow Staff to present the matter
3. Allow the Applicant to address the Commission
4. Open the meeting for public comment
5. Close the Public Hearing
6. Take action as appropriate

The Planning Commission shall review the request at a Public Hearing and make a recommendation to the Town Board of Trustees, who shall make the final determination.

Shoreline setback discussion:

*(b) The following factors will be considered in determining whether to issue a variance:*

- 1. The shape, size, topography, slope, soils, vegetation, and other physical characteristics of the property.*
- 2. The locations of all bodies of water on the property, including along property boundaries.*
- 3. The location and extent of the proposed setback intrusion.*
- 4. Whether alternative designs are possible which require less intrusion or no intrusion.*
- 5. Sensitivity of the body of water and affected critical habitats.*
- 6. Intensity of land use adjacent to the body of water proposed to intrusion.*
- 7. Impact on floodplains and stream functions (a variance shall not be approved when the reduction would result in the setback being narrower than the floodplain)*

Retaining wall discussion:

*Variance requests will only be granted if the applicant can demonstrate all of the following:*



- 1. That by reason of exceptional shape, size or topography of lot, or other exceptional situation or condition of the building or land, practical difficulty or unnecessary hardship would result to the owners of said property from a strict enforcement of these Regulations;*
- 2. That literal interpretation of the provisions of these Regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of these Regulations.*
- 3. That the special conditions and circumstances do not result from the actions of the applicant;*
- 4. That granting the variance request will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district;*
- 5. That the granting of the variance does not pose a detriment to the public good and does not substantially impair the intent and purpose of the Zone Plan and these Regulations.*

#### **Commission Suggested Motion**

- 1. I Move to Adopt Resolution 06-2022; Recommending the Approval of the Variance to Shoreline and Surface Water Regulations and a Retaining Wall over Eight Feet High at Lot 6, Shadow Point Subdivision, as presented.**

**Or**

- 1. I Move to Adopt Resolution 06-2022; Recommending the Approval of the Variance to Shoreline and Surface Water Regulations and a Retaining Wall over Eight Feet High at Lot 6, Shadow Point Subdivision, with the following conditions\_\_\_\_\_.**

**Or**

- 2. I Move to Deny the Resolution**