



Date: November 27<sup>th</sup>, 2023  
To: Mayor Kudron and Trustees  
From: Kim White, Planning Department

RE: **QUASI JUDICIAL (PUBLIC HEARING)** : Resolution 43-2023; Consideration to Grant a Variance to Height Regulations for Retaining Wall Located at a Metes and Bounds Property Commonly Referred to as 1204 West Portal Road

### Public Hearing Process

The public hearing should be conducted as follows:

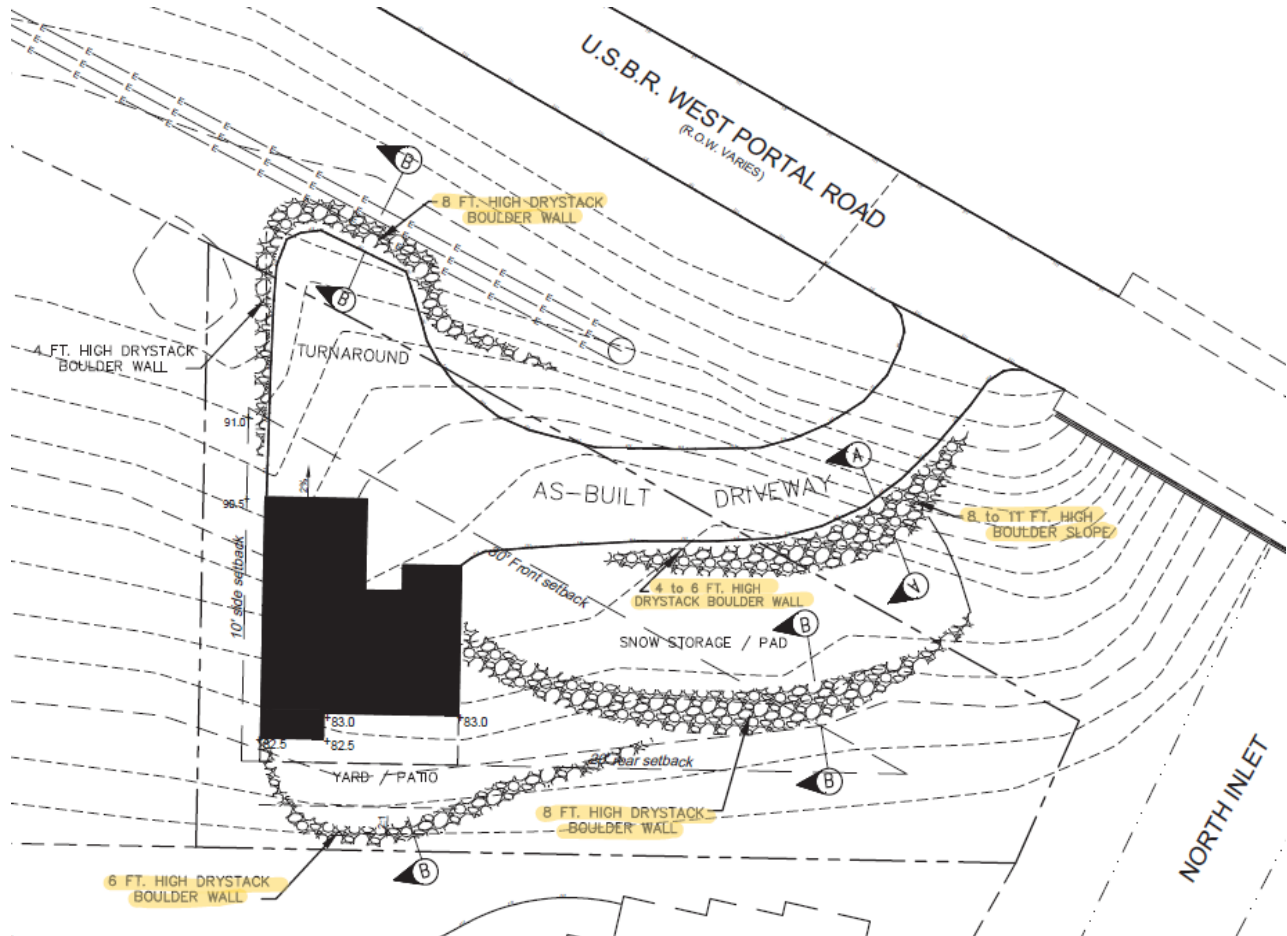
1. Open the Public Hearing
2. Allow staff to present the matter
3. Allow the applicant to address the Board
4. Take all public comment
5. Close the Public Hearing
6. Have Board discuss amongst themselves
7. Board make a motion

### Location Map





## Wall Height Graphic- Highlighted are over 4 and 6 feet



### Purpose

The Town has received a variance request from Cynthia A. Biersdorfer and Keith Nichols to permit 8 foot retaining walls to remain on their property and in the Town Right of Way. Per Municipal code 11-2-11, this request requires Planning Commission review and Board Approval.

### Background

The location of the walls that are over six (4) feet are highlighted in yellow above. The applicant stated that the walls were not planned in the initial plans, but during the spring runoff, mud slides and flooding occurred and ran into their home, so they had to quickly build the walls to prevent further damage to their home. They stated that the runoff occurred due to the lack of vegetation upstream from the East Troublesome Fire. Code requires that walls over four (4) feet must be engineered by a licensed engineer, and over six (6) feet must have Planning Commission recommendation and Board approval.



Planning Commission approved PC resolution 9-2023 stating that the applicant met all of the hardship qualifications and recommended to the Board that the walls could be over six (6) feet to protect the property.

### **Municipal Code:**

#### **Municipal Code 12-2-11(C) – [Zoning Standards]**

*Minimum Setback Front 25' Side 10' Rear 10' Shoreline 30'*

#### **11-2-4 (D) - Roadway Specifications.**

##### *9. Retaining Walls.*

*(a) Where necessary to meet required side slope grades, walls may be utilized.*

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

*(c) Location. Retaining walls may not be located closer than ten (10) feet from the traveled lanes (maximum separation is desired).*

*(d) Design. Retaining walls over four (4) feet must be designed by a Colorado Professional Engineer. Retaining walls should include façade design, which is subject to approval by the Town and county building department.*

#### **Municipal Code 12-2-27 Supplemental Regulations for Setback, Height and Area.**

#### **11-2-11 Variance Request and Procedure.**

*If an applicant responsible to the Town for public improvements desires to design and construct such improvements in variance to criteria in these standards, each variance shall be identified in the initial submittal.*

- (A) Application. An application for a variance shall be filed with Town Staff no later than twenty-one (21) days prior to the next regularly-scheduled Planning Commission meeting...*
- (B) Planning Commission Review. Variances from the Street Development Policies, Standards, and Specifications shall be reviewed by the Planning Commission at a Public Hearing and make a recommendation to the Board of Trustees.
  - 1. Fifteen (15) days prior to the scheduled Public Hearing date, legal notice shall be placed in the local newspaper of general circulation advertising the time, date, and location of the Public Hearing.*
  - 2. In addition, certified letters are to be mailed at least fifteen (15) days prior to the Public Hearing to all property owners within two hundred (200) feet of any portion of the property.**
- (C) Board of Trustees Review. The Board of Trustees shall grant no variance without first receiving a recommendation from the Planning Commission. The Board may opt to hold a Public Hearing before granting the variance.*
- (D) Hardships for Consideration. 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.**



## Staff Comments

Staff received all required items for the request:

1. Appropriate Fee and/or deposit; and
2. Signed Agreement for Services; and
3. A site plan and/or survey; and
4. The applicable Municipal Code Standard to be waived or varied; and
5. A letter explaining the Hardships for Consideration associated with the variance request.

Staff sent letters to neighbors within 200', with two positive response and no negative responses.

Staff received engineered documents for all walls over four feet (4').

## Board Discussion

The Trustees should discuss the request amongst themselves, with consideration of staff, Planning Commission, and the findings of fact from the code 11-2-11 (D) (1-5), in order to make a decision/recommendation.

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.

## Suggested Board Motion

Motion to approve Resolution 43-2023

OR

Motion to approve Resolution 43-2023, with the following conditions:

OR

Motion to Deny the Request for Variance.

Attachments:

- Variance application with hardship
- Original site engineering
- As build plan with wall heights
- Engineered Wall documents