



Date: November 27th, 2023

To: Mayor Kudron and Trustees

From: Kim White, Community Development Director

RE: **QUASI JUDICIAL (PUBLIC HEARING):** Resolution 42-2023 Consideration to Grant a Variance to Roadway Regulations 11-2-6 to Allow a Non-Conforming Driveway Located at a Metes and Bounds Property Commonly referred to as 1204 West Portal Rd, Grand Lake, Colorado

Public Hearing Process

The public hearing should be conducted as follows:

1. Open the Public Hearing
2. Allow staff to present all 4 items
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





Purpose

The Town has received multiple requests for exceptions to the Municipal Code from Cynthia A. Biersdorfer and Keith Nichols to permit a non-conforming driveway, retaining walls and two encroachments.

Location

The property is located at 1204 West Portal Rd. The property is approximately 0.4 acres located adjacent to the Tonahutu Creek and zoned Single Family Residential High Density. METES & BOUNDS 75 ALL PT OF LOTS 2,6,7 SEC 5 T3N R75W DESC AT B/266 P/5+3 .447 AC +/- LYING SOUTH OF TUNNEL RD AND WEST OF NORTH INLET LOCATED IN LOT 2, SECT 5 T3N R75W DESC IN B/266 P/462

Overall Comments on all Requests

After reviewing the history of the project, the overall theme is that the driveway was not built as presented in the 2020 approved plans and it caused many problems, from directing mudslides into the home, to having to build expansive walls to prevent further damage, and excessive grade of the drive itself. While the approved driveway worked on paper, being in the mountains, it does not always translate to the site. The owner seems satisfied with the excessive grade of the drive and the excessive heights of the walls. There are 4 requests for this project and will be addressed with supporting documents on the following Board Packet Items:

- 1) Resolution 42-2023, a Resolution to allow the grade of the driveway to be in excess of 4%, in the first 25' of the driveway, and to allow the drive to be in excess of 10% after the first 25'. (This was recommended by the PC at the Nov 15th 4:0)
- 2) Resolution 43-2023, A Resolution to allow the height of the retaining walls to exceed the allowable height of 6' with an approved engineering plan of anything over 4'. (This was recommended by PC Aug 16th 5:1)
- 3) Resolution 44-2023, a Resolution to allow an encroachment of the boulders that are in the Town Right of Way which hold up the driveway entering West Portal Rd.
- 4) Resolution 45-2023, a Resolution to allow an encroachment of parking area turnaround with boulder wall to be 23' into the Town Right of Way on West Portal Rd.

History of Project:

- Survey Information and plans for home prepared around May, 2019
- August 2019, Portal Bridge rebuild complete.
- Staff reviewed plans for the new home in April 2020.
- Staff emailed builder to let them know they would be allowed to enter from Portal because no alternative routes were available (per 11-2-6(B)(6(a))).
- April 29th, 2020 – sent checklist of deficiencies for submitted plans – including 5% driveway grade to be reduced to 4% and snow storage on Town ROW is not permitted.
- May 20, 2020, received the updated plans for the requested 5% grade in the first 25' be lowered to 4%. Informed builder that plans showed snow storage on Town ROW and it needed to be moved.



- May 20, 2020, Planning Commission reviewed application because of the driveway entrance on major roadway and property adjacency to a water course.
- June 11th, 2020, met onsite with builder for pre-site inspection after the centerline of the driveway and corners of the lot were staked. Discussed with the builder cutting the guardrail and having it wrap down the driveway to prevent any traffic from entering the river from Portal.
- June 26th 2020, building permit issued with condition that guard rail was rebuilt (attachment A).
- October 2020, ROW permit issued for Ideal Fencing Company to repair and move guard rail.
- October 2020, Troublesome fire.
- Spring 2021, mud flows down drive into the home, damaging the home, retaining walls build to prevent further mud flows.
- October 12, 2022, final certificate of occupancy requested. Failed inspection due to materials in ROW, no landscape or erosion control in place, original plans did not match the final built site.
- Applicant requested variance for retaining walls over eight feet (over 4' require engineering, and over 6' require planning commission recommendation and Board approval) Applicant provided engineering documents for all walls over 4'.
- Fall 2023, received voice mail from Insight engineering describing original topographic data. Stated that the survey they were originally given in 2019 was missing contours on the east side of the lot, so they used LIDAR to interpolate the eastern portion of the property.
- August 16th, 2023 Planning Commission Hearing; voted 5:1 to recommend the Board allow retaining walls higher than 6'.
- Fire Department reviewed the access and stated that they cannot use the driveway or extra turn-around space for their vehicle, but they would be able to provide services from West Portal. Rd. Fire department approval is not required for conforming driveways under 150'.
- November 15th, 2023, Planning Commission Hearing voted 4:0 to recommend the Board allow the non-conforming grade of the driveway as the first 25' were over 4% and the remaining drive ranged from 11-22%.

Background for Resolution 42-2023:

The Town has received a variance request from Cynthia A. Biersdorfer and Keith Nichols to permit a driveway at a grade of over 10% after the first 25 feet, as well as over 4% for the first 25 feet (fig 2). Per Municipal code 11-2-11, this request requires Planning Commission review and Board Approval.

At the August 16th, 2023 Planning Commission Hearing for a variance request to allow retaining walls higher than 6', it was shown that the grade of the driveway exceeded Town Standards of 10% after the first 25' of drive. The Planning Commission voted 5:1 to recommend the Board of Trustees to approve the retaining wall height, however an additional hearing for the steepness of the driveway was required. The applicant obtained exact grade topography and submitted a request for the variance on 10/13/2023. Public notice was sent to neighbors within 200' of the property with one positive response and zero negative responses. Electric, gas, sewer and water utilities were all contacted, and they do not have issue with these variances. Fire Department reviewed the access and stated that they cannot use the driveway and would be able to provide services from West Portal.



Grade of Driveway

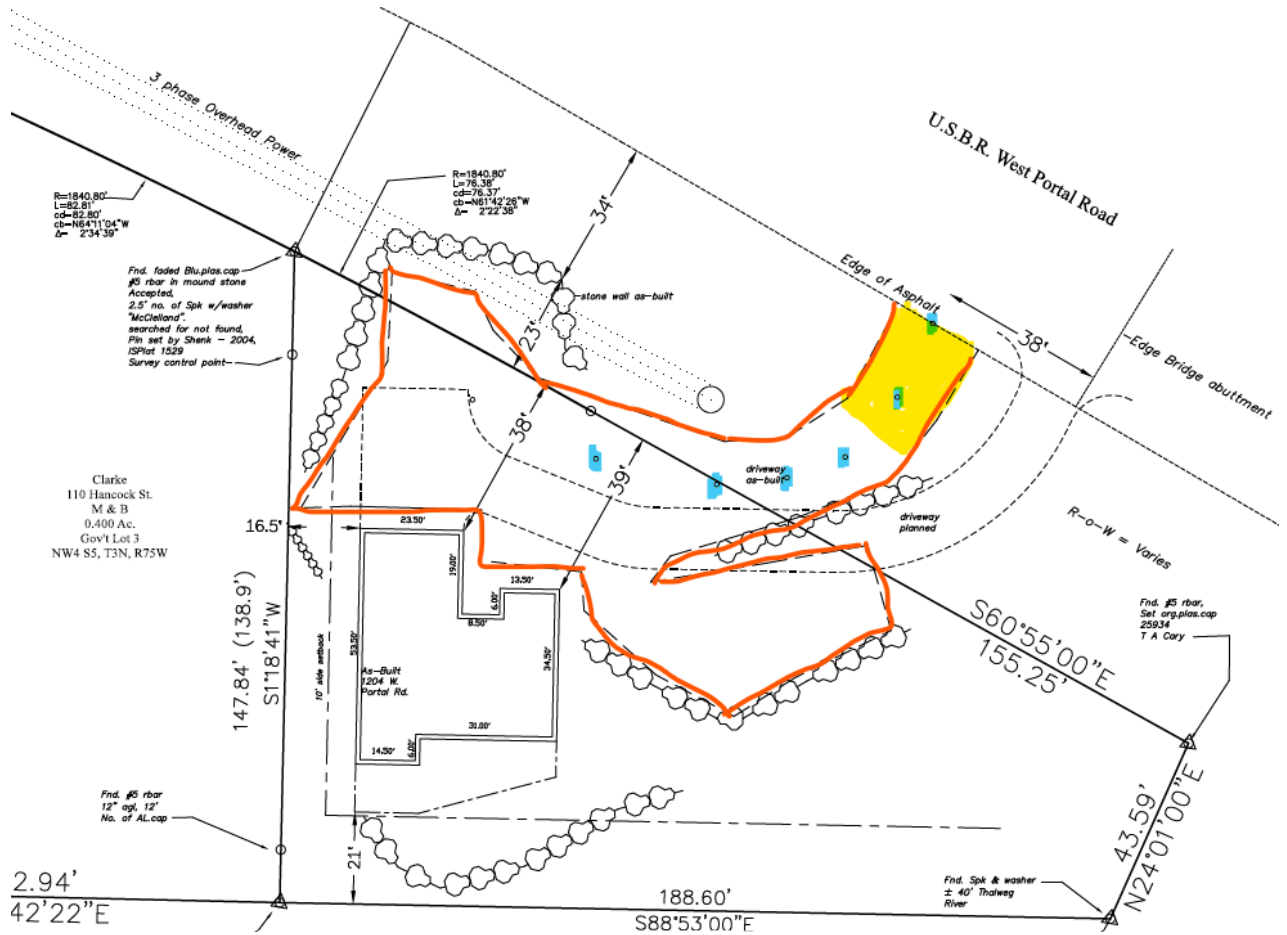


Figure 1- orange line is the existing conditions. Yellow highlight and Blue dots align with the yellow lines and blue dots in fig. 2 for reference points. Black dashed line is the original driveway plan.

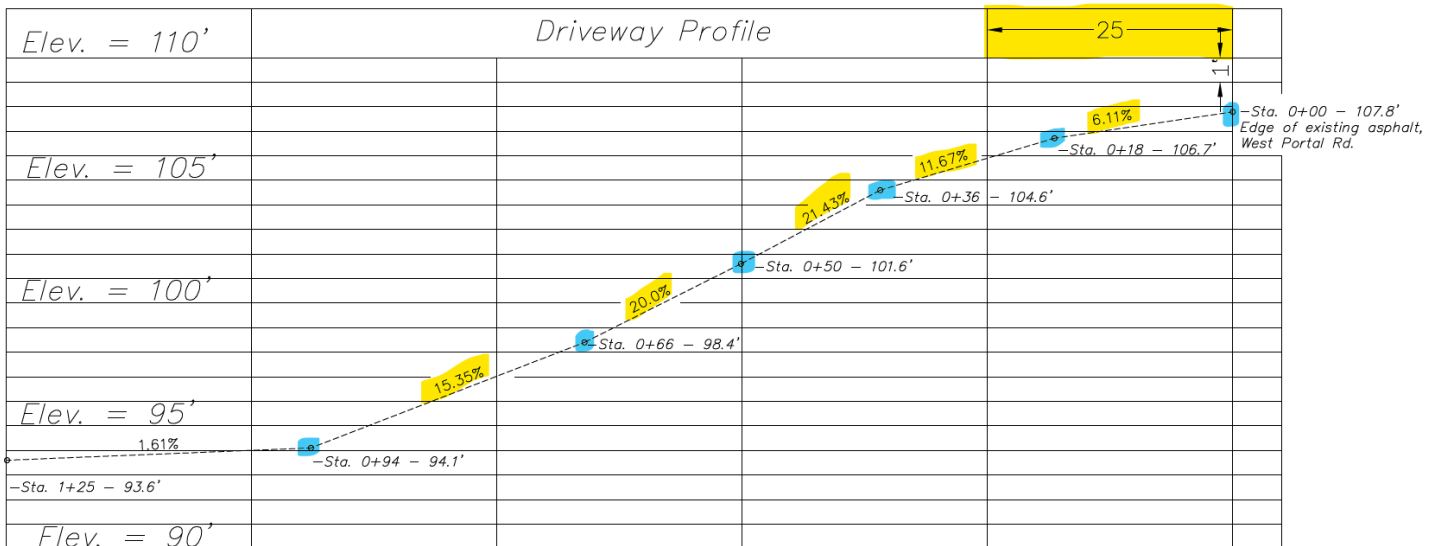


Figure 2



Municipal Code:

11-2-6 Private Drives, Emergency Access Requirements, and Criteria.

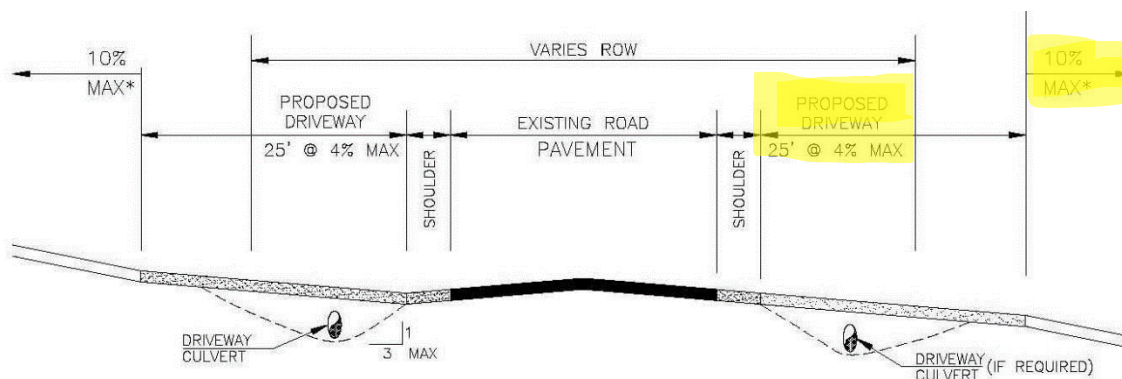
(A) Criteria for Access Onto Town of Grand Lake Roadways.

10. Minimum Design Standards.

(a) Residential Driveways.

6. An access shall not exceed a four percent (4.0%) grade for the first twenty-five (25) feet, measured from the edge of the nearest drive lane. (See Figure 12.)

Figure 12: Driveway Grade Criteria



***Heated driveways, maximum grade 12%**

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

After receiving the driveway elevation profile (figure 2), Staff noted that, of the first 25 feet of the driveway, the first 18 feet of the driveway was at 6.11% and the remaining 7 feet was at 11.67%. The allowance for grade in the first 25 feet is 4%. Also, the driveway grade ranged up to 21.43% after the first 25 feet, while the code requires no more than 10% for unheated driveways (section 11-2-6 Figure 12 of the municipal code). On November 15th, 2023, after reviewing the hardship qualifications, the Planning Commission voted to approve PC resolution 10-2023 recommending that the Board approve the non-conforming grade of the driveway.

A public hearing was properly noticed in the Middle Park Times and the Town has received 13 of the 18 notices that were sent to neighboring properties within 200'. 1 comment was received in favor of the excessive grade, no negative comments were received.

The Applicant has submitted the topographic survey of the driveway as required.

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; and
5. A letter explaining the Hardships for Consideration associated with the variance request. (attached)

Board Discussion

The Board should discuss 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 42-2023

OR

Motion to approve Resolution 42-2023 with the following conditions:

OR

Motion to Deny the Request for Variance.

Attached items:

- Variance application with hardship letter
- Letter about guardrail timing
- Original site engineering
- Current existing grade and driveway layout
- Images of mudslide damage
- Neighbor support letters