



Date: November 27th, 2023
To: Mayor Kudron and Trustees
From: Kim White, Community Development Director

RE: **QUASI JUDICIAL:** Resolution 44-2023 Consideration to Grant an Encroachment License for Retaining Wall A into the Town's Right of Way 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





Purpose

The Town has received a zoning variance request application from Cynthia A. Biersdorfer and Keith Nichols to permit retaining walls to remain in the Town Right of Way. This request requires an Encroachment License, Indemnification Agreement, Insurance to be Carried on the Encroachment, License Fee, and Board Approval.

Background

The Boulders that are located in the Town Right of Way which reinforce the driveway are shown in Figure 1 as "A". the encroachments are split into two licenses, as they are two separate walls, and if the Town needs to revoke the license in the future, it will be cleaner if only one area needs to be removed. On August 16th 2023, the Planning Commission voted 5:1 in favor of recommending an exception to the height of the retaining walls for this property. The Board will have voted on Resolution 42-2023 to allow or deny the height variance to remain. If it passed, Resolution 44-2023 and 45-2023 can be voted on. 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.

Encroachment Graphic

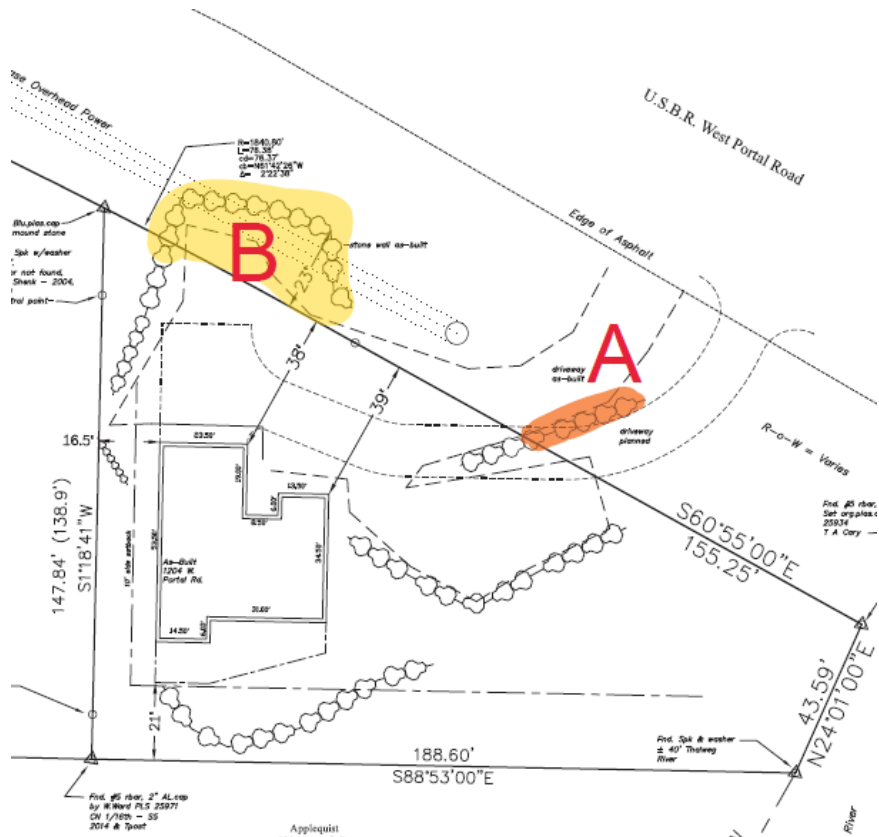


Figure 1



Municipal Code:

11-6-1 Public Property Encroachments.

- (A) *Encroachment Defined.* An encroachment is any item that is placed, erected or built on the public right-of-way by a private property owner. A property owner shall seek permission from the Town to encroach onto Rights-of-Way or municipal property prior to the encroachment occurring. Where an encroachment exists without Town approval, the owner shall be required to remove the encroachment at his own expense or seek permission from the Town for the encroachment to remain.
- (B) *Types of Encroachments.*
1. Major Encroachments are considered encroachments that are more permanent in nature. Examples include, but are not limited to: buildings or structures, driveways, fences and retaining walls, decks and patios, some components of public utilities, as well as other immovable objects other than minor landscaping.
- (C) **When Encroachments Will Not Be Granted.** The following encroachment license or agreement requests will not be granted:
1. Additions to existing buildings or other structures that would encroach or do encroach onto municipal property or road Rights-of-Way, or
 2. The encroachment poses a danger to the public, or
- (D) **When Encroachments May Not Be Granted.** The following encroachment license of agreement requests may not be granted, as determined by the Town Board of Trustees:
1. The proposed encroachment is in conflict with applicable Town Departments and/or applicable utility companies, or
 2. When construction has commenced prior to the issuance of a required permit from the Town.
- (G) *Indemnification and Insurance Requirements.* The property owner is required to indemnify and save harmless The Town of Grand Lake against any and all damages which may result from the encroachment. Insurance may be required. The certificate of insurance shall be submitted to the Town prior to the execution or issuance of the Encroachment License or Agreement.

Staff Comments

The applicant submitted all the required items:

1. A Narrative Request; and
2. A Site Plan indicating exact measurements of the proposed encroachment and its position to the property boundaries; and
3. Applicable Deposits and/or Fees, as set by Town of Grand Lake Board of Trustees Resolution; and
4. Any other information determined by Town staff applicable to the review of the request.

Staff contacted all the utilities companies to notify them of the Boulders in the right of way. All utilities cleared the encroachment.

Encroachment license can be revoked with 45-day notice to the owner, at which point they must return the land to it's original condition with vegetation.



Board Discussion

The Board shall approve, approve with conditions, or deny the application at a public meeting. The Board may continue the application review to a later date (not to exceed forty-five (45) days) in order to obtain more information about the request or to conduct site inspections. If approved, an Encroachment License will be issued.

Suggested Board Motion

Motion to approve Resolution 44-2023

OR

Motion to approve Resolution 44-2023, with the following conditions: _____

OR

Motion to Deny the Request an encroachment license.

Attachments:

Encroachment resolution

Encroachment license

Exhibit of encroachment location

Engineering documentation of walls over 4 ft.