

**TOWN OF GRAND LAKE
BOARD OF TRUSTEES
RESOLUTION NO. 21-2024**

**A RESOLUTION APPROVING A VARIANCE TO THE STREAM AND LAKE
SETBACK REQUIREMENTS FOR PROPERTY LOCATED AT 210 RAPIDS LANE,
WITH CONDITIONS**

WHEREAS, Tomlynson, Inc., (the “Applicant”) is the owner of certain real property located at 210 Rapids Lane, more particularly described as follows:

Sunnyside Addition to Grand Lake Lot 18 Block: 1 & A Tract East of Lot 18 to Center of North Inlet, (the “Property”); and

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

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.*

WHEREAS, Municipal Code 12-2-29 further provides in subpart 4:

4. *The first five (5) feet of this setback shall be a non-disturbance zone, except in the cases of bridges, irrigation structures, flood control devices, boathouses, commercial marinas, boat rentals, boat repair and maintenance facilities and walkways and stairways less than four (4) feet in width leading directly from the shoreline to the principal structure; and*

WHEREAS, there is no provision in the Municipal Code for variance of the five feet non-disturbance zone; and

WHEREAS, within the 30-foot setback zone, and to a much lesser extent within the 5 foot non-disturbance zone, the Applicant has constructed a deck along the shore of North Inlet adjacent to the Property (the “Deck”); and

WHEREAS, the Applicant did not obtain a building permit prior to constructing the Deck; and

WHEREAS, the Applicant has submitted a request for a setback variance to allow the Deck to remain, as shown on Exhibit A, attached; and

WHEREAS, Section 12-2-29(A)(2) requires the Applicant to establish that the proposed activity conforms to one or more of the following exceptions set forth in Section 12-3-5(A)4(a) through (e) of the Municipal Code:

- (a) 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;
- (b) 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.
- (c) The special conditions and circumstances do not result from the actions of the applicant;
- (d) 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;
- (e) 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.

WHEREAS, Section 12-2-29(A)(2)(b) provides that in considering a variance request, the Planning Commission and, in turn, the Board of Trustees are to consider all of the following factors to determine whether to issue a variance to the 30-foot setback requirement:

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); and

WHEREAS, subsequent to the filing of the Application, Town staff became aware of certain requirements of FEMA and the state flood insurance program, specifically requiring a complete flood plain permit application and an encroachment analysis demonstrating no more than a one-half foot rise in base flood elevation as a result of the development, as well as documentation showing how the development is anchored; and

WHEREAS, on February 21, 2024, following proper notice, the Planning Commission considered the variance application and found as follows, based, in part, on the commercial use of the property:

- (a) 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; and
- (e) 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; and

WHEREAS, based on its findings, the Planning Commission adopted Resolution 01-2024, recommending approval of the variance subject to the following conditions:

1. That the portions of the Deck that encroach into the 5-foot Non-Disturbance Zone as shown in Areas A, C, and E on Exhibit A be removed. Although Areas B and D encroach into the Non-Disturbance Zone, they are *de minimis* in size (0.1 square feet and 0.7 square feet, respectively), and are measured from an approximate high-water line, and therefore need not be removed.
2. That the Applicant obtain a building permit for the remaining portions of the Deck, including the submission of construction drawings and other required documentation, and pay the requisite fees for such permit.
3. That the Applicant maintain or increase, but not remove, the natural riparian vegetation, in compliance with all rules and regulations, to prevent erosion of the shoreline in the areas between the Deck and the stream.
4. That the remaining portions of the Deck comply with all other provisions of the Grand Lake Municipal Code, including but not limited to Section 12-2-29(A)(5).
5. That the Applicant refrain from further use or occupancy of the Deck until the foregoing conditions have been fulfilled as certified by the Town Manager.
6. That the Applicant finalize flood plain application requirements, including providing documentation on deck anchoring system, and providing evidence in the form of a certified encroachment analysis to demonstrate no more than a one-half foot rise in base flood elevation between existing and post-construction; and

WHEREAS, the Board of Trustees reviewed the Application, the presentation by the Applicant, the recommendation of the Planning Commission, and the public testimony presented at a regularly scheduled meeting on March 25th, 2024; and

WHEREAS, based on those considerations, the Board of Trustees makes the following findings:

FINDINGS OF THE BOARD OF TRUSTEES

1. The Board of Trustees considered each of the factors required by Section 12-2-29((2)(b)).
2. The Applicant established the following exception(s) under Section 12-3-5(a)(4(a) through (e): [Board of Trustees must find at least one, in order to satisfy this requirement. Select all that apply:]
 - (a) 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;

- (b) 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.
- (c) That the special conditions and circumstances do not result from the actions of the applicant;
- (d) 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;
- (e) 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.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF GRAND LAKE, COLORADO:

1. The Board of Trustees grants the variance requested by the Applicant to reduce the 30-foot setback requirements provided for in Section 12-29-20(A)(1) of the Municipal Code subject to the following terms and conditions:
 - a. That the portions of the Deck that encroach into the Non-Disturbance Zone as shown in Areas A, C, and E on Exhibit A be removed. Although Areas B and D encroach into the Non-Disturbance Zone, they are *de minimis* in size (0.1 square feet and 0.7 square feet, respectively), and are measured from an approximate high-water line, and therefore need not be removed.
 - b. That the Applicant obtain a building permit for the remaining portions of the Deck, including the submission of construction drawings and other required documentation, and pay the requisite fees for such permit.
 - c. That the Applicant maintain or increase the riparian vegetation to prevent erosion of the shoreline in the areas between the Deck and the stream.
 - d. That the remaining portions of the Deck comply with all other provisions of the Grand Lake Municipal Code, including but not limited to Section 12-2-29(A)(5).
 - e. That the Applicant finalize flood plain application requirements, including providing documentation on deck anchoring system, and providing evidence in the form of a certified encroachment analysis to demonstrate no more than a one-half foot rise in base flood elevation between existing and post-construction or a certified report from a licensed engineer stating that the development will not impact the floodplain in any way and will not impact other adjacent, insured structures.
 - f. That the Applicant refrain from further use or occupancy of the Deck until the foregoing conditions have been fulfilled as certified by the Town Manager.

DULY MOVED, SECONDED AND ADOPTED BY THE BOARD OF TRUSTEES OF THE

TOWN OF GRAND LAKE, COLORADO THIS 8th DAY OF APRIL, 2024

(S E A L)

Votes Approving:
Votes Opposed:
Absent:
Abstained:

**ATTEST:

COLORADO**

**BOARD OF TRUSTEES OF THE
TOWN OF GRAND LAKE,**

Alayna Carrell
Town Clerk

By: _____
Steve Kudron
Mayor