



March 25th, 2024

To: Mayor Kudron and The Board of Trustees  
From: Kim White, Community Development Director

RE: **PUBLIC HEARING- (QUASI-JUDICIAL)** Continued from January 22nd, 2024, Consideration to Adopt Resolution 21-2024; Considering a Variance to the Stream and Lake Setback Requirements for Property Located at 210 Rapids Lane, with Conditions

**Purpose**

The Town has received a shoreline variance request for a newly constructed deck partially in the five foot (5') non-disturbance zone and fully within the thirty (30') shoreline setback area (Fig 1). Neither a variance to stream setbacks nor a building permit was obtained prior to construction of the deck.

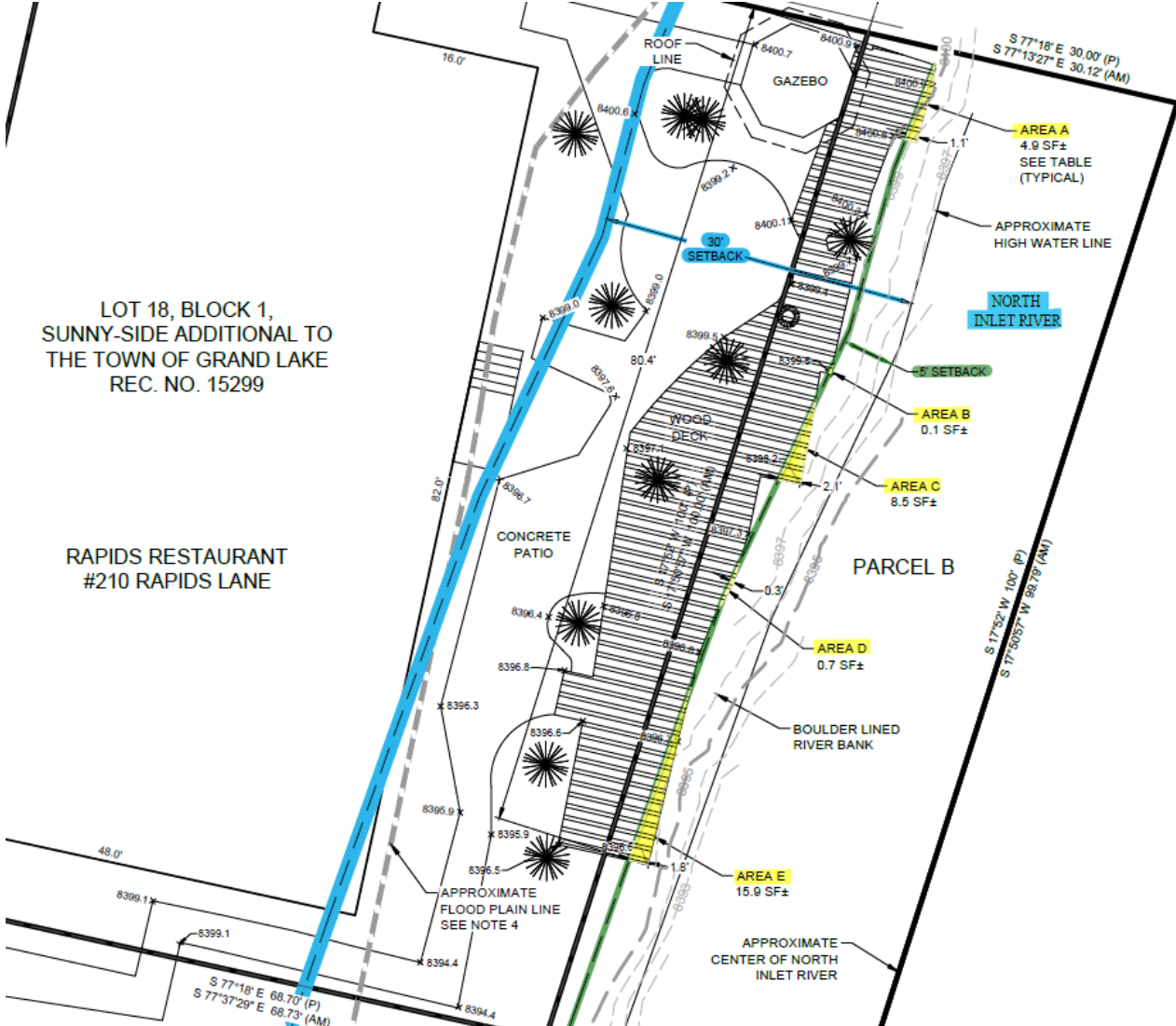


Figure 1- yellow highlighted area within the 5' non-disturbance zone



### **Background:**

A gazebo has existed on the applicant's property for a number of years upstream of the deck that is the subject of the current variance request. It is the newly built deck downstream from the gazebo that is the structure involved in this application for variance, not the gazebo.

An image of the newly built deck was seen on social media and reported to staff, who investigated the matter and mailed a letter to the owner of the deck, requesting submission of a building permit and shoreline variance request (Exhibit 1). The owner of the property had Never Summer Attorneys correspond directly with the Town on the matter, stating to the Town that the deck pre-dated the shoreline setback regulation and was a floating deck, (not attached/dug into the ground), and thus did not require a shoreline variance, nor did it require a permit.

- The County Building official was notified of the deck and he informed Town Staff that according to International Building Code, since it is a commercial property and open to the public, there should have been a building permit issued and it would be in the interest of the owner to have a portion of the deck meet ADA regulations to protect the owner.
- The Town received a phone call from the State flood insurance group who stated that any items built in the flood plain require documentation to be filed with the Town.
- The Town attorney and the Owner's attorney discussed the item via a zoom meeting and agreed to allow the Owner to provide evidence of the deck's existence prior to the date of the shoreline setback regulations, and also gave them 45 days to provide all application documents to the Town for the shoreline setback variance.
- The Owners submitted the documents for the shoreline variance and the flood plain application but did not submit a building permit application, nor did they provide evidence of the deck as a pre-existing, non-conforming condition.
- The flood plain application was reviewed with the state official, who stated that an encroachment analysis is required as well as documentation on how the structure is anchored to prevent it causing issues downstream in the event of flooding.
- The item was brought before the Planning Commission at a noticed Public Hearing on January 17th, 2024 where the commissioners voted unanimously to continue the hearing until February 21<sup>st</sup>, 2024, at which time they voted 6:0 in favor of the resolution with conditions (exhibit 5).
- The Board of Trustees motioned to continue the hearing from January 22<sup>nd</sup>, 2024 until March 25<sup>th</sup>, 2024 to accommodate the Planning Commission continuation.

### **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.** ...*

*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.*

*5. In addition to these required stream and lake setbacks, properties contiguous to any stream, creek, river, irrigation ditch, lake, pond, or wetland area, shall be required to abide by the Erosion and Sediment Control Regulations as then in effect for [Grand County](#), for construction projects involving ground disturbance. This requirement applies to single family, multiple family, commercial, and all other construction involving ground disturbance.*





### Staff Analysis

Upon review of the history of this site, it was found that in 2011, the shoreline was reinforced with boulders to combat flooding on the shoreline (fig 2 & 2b). From the photos, it appears that the soil was likely compacted by the boulder-moving machinery when the boulders were put in place, which may have killed one or more of the trees. For reference, the popular stump seat shown in the photos below appears to be a full-sized tree in 2011 (orange arrow). The shoreline was revegetated after the shoreline reinforcement project. This is an example of how compaction of soil is a detriment to tree viability.



**Figure 2 & 2b- Flood control 2011**



**Figure 3- Recent photo showing tree stump cut into a chair shape, for reference.**

In photos obtained from online reviews, grass along the shore appears as a thick lawn in 2014 (fig 4), but by 2019 it is sparse (fig 5), and all but gone in 2021 (fig 6).



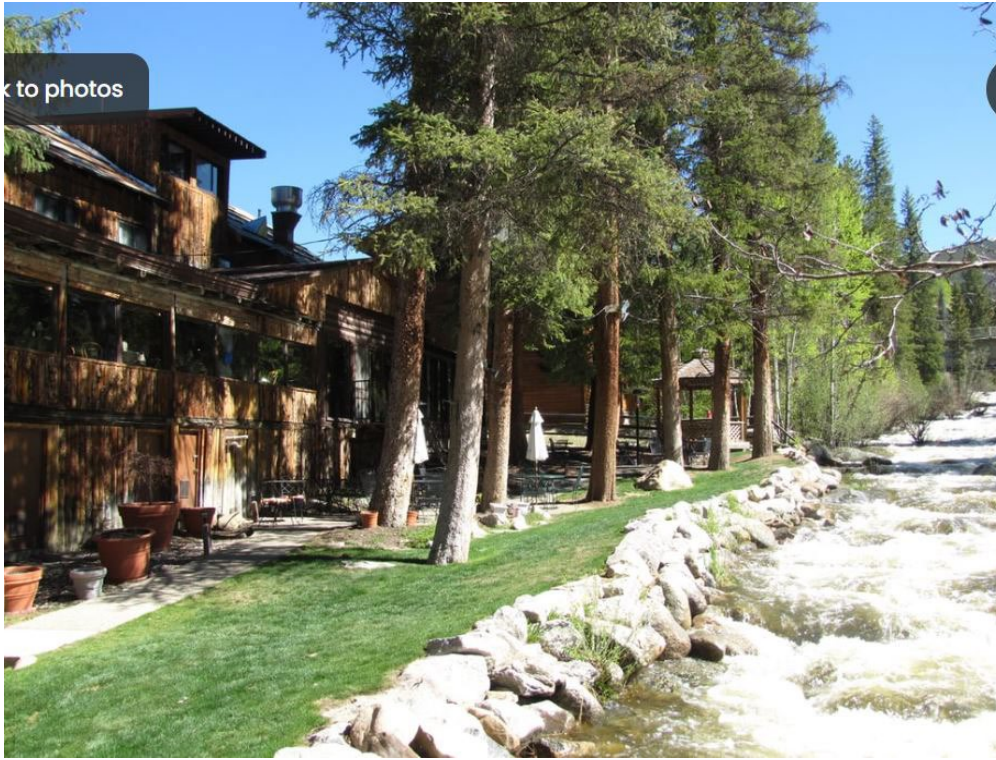


Figure 4-2014 thick lawn after the 2011 shoreline reinforcement



Figure 5- 2019 sparse lawn





**Figure 6- 2021 no deck no grass; very high water**

By having dining on the shoreline without proper vegetation, erosion will continue to occur, and although none are showing yet, tree roots can be exposed, and compacted soil will increase, as captured in these images (fig 7).



**Figure 7- 2020 no grass, compacted soil, no roots shown**





Sometime during 2021-2023 a deck was put in place to cover the uneven dirt shoreline and possible exposed roots (fig 8). No building construction documents were submitted, so it is unclear whether it is a floating deck, how the deck will stay in place if there is a sudden increase in water level, and if the deck was built to building code standards.



**Figure 8**

Since the deck is not in the stream and is not dug into the shoreline, the Army Corp and the CDPHE approval were not required, but it is in the FEMA flood zone A and any structure built in the zone requires documentation to be filed with the Town (Figure 9).



**Figure 9**



The applicant submitted paperwork for the shoreline variance and the flood plain application required by the State Flood Plain administration (exhibit 4). Upon review of the documents, the flood plain application is viewed as incomplete by FEMA because the applicant must obtain an encroachment analysis (from an engineer or other professional) to demonstrate no more than a one-half foot (1/2') rise in base flood elevation between existing and post-construction conditions and documentation for how it is anchored is missing. At the February 21<sup>st</sup>, Planning Commission hearing the applicant agreed to obtain the encroachment analysis.

The applicant has not submitted construction documents or an application for a building permit. The applicants initially indicated that the deck has been in place for decades. However, once the Town provided the applicant's attorney with photos of the area as recently as 2019, 2020, and 2021 without the deck, the applicant agreed to submit a variance request to shoreline regulations to permit all of the new deck.

The existing deck is a use by right in this Commercial Transitional zone as 12-2-10 (item 13) accessory use, but there is no evidence it complies with building code regulations pertaining to decks, as no construction documents have been submitted.

Staff caused the publication of this Public Hearing in the Middle Park Times and contacted the surrounding properties owners as required by the Municipal Code with 14 of the 23 notices having been received. The Town received 2 written comments in response to this mailed notice. One comment was in favor of the variance and one comment was against allowing the variance (exhibit 2 & 3). On January 17<sup>th</sup>, 2024, due to a winter storm, the Planning Commission unanimous voted to continue until February 21<sup>st</sup>, 2024. This motion required that the Board of Trustees to vote unanimously to continue their legally noticed public hearing from January 22<sup>nd</sup>, 2024 until March 25<sup>th</sup>, 2024.

If the Board recommends granting a variance to allow the deck to remain, staff recommends that such approval be conditioned on (1) removing those portions of the deck in Areas A, C, and E that encroach into the 5-foot non-disturbance zone, as there is no avenue for a variance to this code provision, (2) submitting a building permit application including the building construction plans for review by the Town zoning and County building department and pay all applicable fees, (3) complying with all other provisions of the Grand Lake Municipal Code that relate to the deck, including but not limited to Section 12-2-29(A)(5), (4) refraining from further use of the deck until construction under the permit has been completed and approved by the building inspector, and (5) complete the floodplain application by obtaining an encroachment analysis (from an engineer or other professional) to demonstrate no more than a one-half foot (1/2') rise in base flood elevation between existing and post-construction conditions and providing documentation on how the deck is anchored to demonstrate that in the event of a flood it will not pose a detriment to public good. It is also suggested that a condition be added that the shoreline vegetation be maintained at current level (fig 10 & 11) and that riparian vegetation is allowed to become denser to limit shoreline erosion (fig 11 orange arrows). The planning commission's intent is that the Owner does not actively remove or otherwise intentionally harm healthy, native, riparian vegetation.





Figure 10 - shoreline vegetation -images from 2023 online real estate marketing



Figure 11- shoreline vegetation (orange arrows at areas with sparse vegetation proposed to be maintained)





### **Board Discussion**

The Board 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 Board
4. Open the meeting for public comment
5. Close the Public Hearing
6. Have a discussion among the Board, including any clarifying questions of staff or the applicant.
7. Adopt a resolution

### **Shoreline setback discussion:**

Section 12-2-29(A)(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. **(Figure 1- highlights areas that are within the 5' zone)**

Section 12-2-29(A)(2):

...During the public hearing the burden on the Applicant shall include but not be limited to, establishing the activity conforms to one (1) or more of the exceptions set forth in Section 12-3-5(A)(4)(a) through (e) **(Applicant submitted exhibit 4 as proof of conformity to exceptions)**

The exceptions in Section 12-3-5(A)(4)(a) through (e) are:

- (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.



**The Board shall consider the following 7 factors:**

Section 12-2-29(A)(2)(b): The following factors will be considered in determining whether to issue a variance from the 30' shoreline regulations:

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)

**Board Suggested Motion**

1. **I Move to Adopt Resolution 21-2024; Approval of the Variance to Shoreline and Surface Water Regulations with conditions, as presented.**

Or

1. **I Move to Adopt Resolution 21-2024; Approval of the Variance to Shoreline and Surface Water Regulations with the following additional conditions**

\_\_\_\_\_.

Or

2. **I Move deny the variance for the following reasons: \_\_\_\_\_**