



Date: January 23rd, 2023
To: Mayor Kudron and Trustees
From: Kim White, Planning Department

RE: **QUASI JUDICIAL (PUBLIC HEARING)** -Consideration of Resolution 04-2023, to Grant a Zoning Variance to Municipal Code 12-2-11(C) to Allow Construction of a Single-Family Home Within The Required 25' Front Setback on Property Located at Lots 3, Block 3, The Ridge at Elk Creek, More Commonly Referred to as 52 Mad Moose Lane.

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 commission
4. Take all public comment
5. Close the Public Hearing
6. Have Commission discuss amongst themselves
7. Commission make a motion

Location Map



Purpose

The Town has received a zoning variance request application from Oliver Leinemann to permit construction of a single-family home within the required 25' front setback of their property. This request requires Planning Commission review and Board Approval.



Context

The property is located at 52 Mad Moose Lane, off Foxy Lane and County Road 48 (Golf Course Rd). The property is approximately 0.2 acres and zoned Single Family Residential Medium Density.

Background

A public hearing was properly noticed and heard on December 7th, 2022, by the Planning Commission. The Commission voted 4:1 to recommend the variance to allow the home to encroach 1' into the front setback and a deck to encroach an additional 4' into the front setback. The total encroachment into the front setback would be 5'. They pointed out that the rear setback of 30' was observed for the water running behind the house as indicated on the attached site plan from the surveyor. The Commission stated that the setback on the front would not interfere with the two adjacent neighbors and said it would be acceptable since the HOA was also in agreement with the request and the subdivision is mostly built out.

Municipal Code:

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

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

Municipal Code 12-2-29(A) – [Shoreline and Surface Water Regulations]

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. The setback applies to a stream, creek, river, irrigation ditch (dry or wet), lake, pond, wetland, or any other body of water.

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

(B) *Variance Request Procedure. Applicants must submit the Request for Variance from Zoning Regulations, with the required attachments and applicable fees, to Town Staff. The Planning Commission will hold a Public Hearing within forty-five (45) days from Town receipt of the application. Fifteen (15) days prior to the scheduled date, legal notice shall be placed in the local newspaper of general circulation advertising the time, date, location of the Public Hearing, as well as the variance request. 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. The Planning Commission shall forward a recommendation to the Town Board of Trustees.*

1. *Town staff shall schedule the Public Hearing for the next available Planning Commission meeting, dependent on the availability on the Planning Commission's agenda.*
2. *The Town Board of Trustees shall hear the variance application, with Planning Commission recommendation, at their next regularly scheduled meeting. The Board of Trustees may elect to hold a Public Hearing regarding the variance application. The Board of Trustees shall grant or deny the variance within forty-five (45) days of receipt from the Planning Commission.*
3. *The following factors should be considered by the Planning Commission and Town Board of Trustees in determining whether to issue a variance:*
 - (a) *The compatibility of the proposed action with the surrounding area; and*
 - (b) *Whether the proposed action is in harmony with the character of the neighborhood; and*
 - (c) *The need for the proposed action; and*
 - (d) *The effect of the proposed action upon future development in the area; and*
 - (e) *The shape, size, topography, slope, soils, vegetation, and other physical characteristics; and*



- (f) *Whether alternative designs are possible; and*
- (g) *With due consideration for the Town's Comprehensive Plan.*

Staff Comments

Staff sent out public notice of this meeting to Middle Park Times on, as well as letters to all 15 property owners surrounding the subject property within 200' on November 17th, 2022. Staff has received 15 confirmations of receipt, and 0 responses to date. Town Staff sent a second set of notices to neighbors informing them about this January 23rd Board Meeting, as well as had a notice published in the Middle Park Times about the item. Town Staff has not received any letter opposing this item at this time.

The applicant's letter for the explanation of their variance request is attached.

The applicant has stated the porch is being requested by their HOA. The remaining set back would be 20', 10' of which is a snow storage and utility easement, per the original development agreement. The garage will not intrude into the 25' set back. The rear setback will be observed at 30', due to the water running behind the home. In order to keep the rear setback at 30', the applicant stated that they must encroach on the front setback.

At the December 7th, 2022, Planning Commission, the Commissioner voted 4:1 to recommend the variance, stating that:

- (a) *The compatibility of the proposed action with the surrounding area is acceptable in design.*
- (b) *The proposed action is in harmony with the character of the neighborhood due to the majority of homeowner response is in favor of the encroachment; and*
- (c) *The need for the proposed action; stating that the applicant said the HOA asked them to put a deck on the front; and*
- (d) *The effect of the proposed action upon future development in the area would be negligible, since it is encroaching the front setback and not a neighboring setback, as well as the front HOA 10' snow storage and utility easement would not be impacted; and*
- (e) *The shape, size, topography, slope, soils, vegetation, and other physical characteristics, because they limit the building footprint on the rear setbacks; and*
- (f) *Whether alternative designs are possible, that the house must be 1200sf per HOA guidelines and it is exactly that in this configuration; and*
- (g) *With due consideration for the Town's Comprehensive Plan, they feel that it meets the guidelines of design and intent of the Comprehensive Plan.*

The dissenting vote was against the 1' encroachment of the house into the front setback, not the 4' encroachment of the deck, recommending the house be redesigned to be 1' less, and the deck could remain.



Board Discussion

The Trustees should discuss the request amongst themselves, with consideration of staff, Planning Commission, and the findings of fact from the code, in order to make a decision/recommendation. Trustees must review and find that each item a-g of municipal code 12-2-27 exists in order to approve said variance.

Suggested Board Motion

Motion to approve Resolution 04-2023, a zoning variance to Municipal Code 12-2-12(C) allowing construction of a porch and house for a total of 5' into the 25' front setback on the property located at Lots 3, Block 3, The Ridge At Elk Creek, more commonly referred to as 52 Mad Moose Lane.

OR

Motion to approve Resolution 04-2023, a zoning variance to Municipal Code 12-2-12(C) allowing construction of a porch and house for a total of 5' into the 25' front setback on the property located at Lots 3, Block 3, The Ridge At Elk Creek, more commonly referred to as 52 Mad Moose Lane, with the following conditions:

OR

Motion to Deny the Request for Variance.