



## TOWN BOARD OF TRUSTEES STAFF MEMORANDUM

**DATE:** February 10, 2025  
**TO:** Mayor and Board of Trustees  
**FROM:** Steve Kudron, Town Manager  
Josh Olhava, AICP, Contract Staff - Planning Department  
**SUBJECT:** **QUASI JUDICIAL (PUBLIC HEARING)** – Resolution 11-2025 - Consideration of Zoning Regulation Variances on Lot 12, Block 12 Grand Lake Subdivision, More Commonly Referred to as 825 Lake Avenue, and the Leatherwood Development Site located on Lots 4-6, Block 5 Grand Lake Subdivision and Lots 9-14, Leatherwood Inn by the Lake Subdivision, More Commonly Referred to as 1016 Grand Avenue and 1001, 1005, and 1007 Lake Avenue.

### Overview

- **Property Owner and Applicant:** Spirit Lake Condos, LLC
- **Applicant's Representative:** Jim Kreutzer
- **Consultant:** Gabe Bellow, MA Studios
- **Project Location:** 825 Lake Avenue, 1016 Grand Avenue and 1001, 1005, and 1007 Lake Avenue
- **Zoning:**
  - Commercial Transition (CT)
  - Commercial (C)
- **Attachments:**
  - Variance Request Packet
    - Application, Request and Explanation of Hardship, Statement of Authority
  - General Leatherwood Project Narrative (context)
  - Preliminary Project Drawings (supporting documentation)
  - Preliminary Alley Grading Exhibit (supporting documentation)



The applicant completed a preliminary concept review before the Town Board and Planning Commission in early 2024, followed by a Sketch Plan review by the Planning Commission in December 2024. Input and guidance from the Sketch Plan discussion and Planning Commission Public Hearing on the variance request informed the attached preliminary project drawings. These drawings are included for reference and illustrate the design characteristics of the on-site development proposals as part of the applicant's variance request justification. Regardless of the variance determination by the Board, the applicant will need to complete the formal Subdivision and Major Land Use Development Review processes as outlined in Chapter 12 of the Municipal Code, which require review by the Planning Commission and Town Board.

The proposed project area for the Leatherwood site encompasses approximately 1.03 acres and is located in the community's core downtown area. The project will include ground-floor commercial tenant space, alley-loaded garages, on-site open space and plazas, and upper-floor residential units. The proposed work at 825 Lake Avenue includes a covered/secure accessory garage structure in the location





- **Variance #3:** To allow a residential condominium to remain on the main floor within the front 50 feet of an existing residential dwelling, commonly known as “The Lakehouse” along Lake Avenue.
  - *Commercial District – C. Uses Permit by Right.*
    - *Sec. 12-2-18(A)10. Residential units, herein defined as: Multi-family attached rental units, condominiums, townhouses, and condo/hotels with the following restrictions:*
      - (a) *The first story area measured from the frontages to fifty (50) feet into the lot shall be dedicated to commercial space.*
- **Variance #4:** To allow a maximum height of up to 52 feet for Building 1 of the Leatherwood project (measured according to municipal code criteria), located at the corner of Lake Avenue and Garfield Street. Staff note: As part of Planning Commission deliberations, a revised exhibit was presented by the applicant (included in this packet) that shows the proposed Event Center elevation and proposed modifications that will also require a variance to the maximum height. The height is shown over 43 feet, code would allow up to 40 feet without a variance based on site topography.
  - *Definitions and Commercial District – C. Maximum Height.*
    - *Sec. 12-2-6. **Height, Building** means the vertical distance measured from the original grade or finish grade whichever is more restrictive to the highest point of the roof surface, exclusive of chimneys, ventilators, pipes, spires or similar items. If the footprint of the structure has an elevation difference of five (5) feet or greater an additional five (5) feet may be added to the lower elevation. The height of a stepped or terraced building is the maximum height of any segment of the building.*
    - *Sec. 12-2-18 Maximum Height is 35 feet’.*
- **Variance #5:** To classify the full Leatherwood project as Group III under the mixed-use open space land area requirements, resulting in a 35% minimum open space land area requirement.
  - *Mixed Use Development Regulations for the C District.*
    - *Sec. 12-2-26(A)3. Mixed-Use projects shall conform to the following schedule of (Private) Open Space Land Area Requirements:*

Group	Gross Square Footage of Floor	Land Use or	Minimum Open
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	Area Of Structure or Land Use Area	Floor Area	Space Land Area Required
I.	75% - 99%	Commercial / Office	20%
	25% - 1%	Residential	
II.	50% - 75%	Commercial / Office	25%
	50% - 25%	Residential	
III.	25% - 50%	Commercial / Office	35%
	75% - 50%	Residential	
IV.	10% - 25%	Commercial / Office	45%
	90% - 75%	Residential	
V.	1% - 9%	Commercial / Office	50%
	99% - 91%	Residential	

### **Staff Analysis**

Public notices were completed following Municipal Code requirements for Variance applications. Notices included both the Planning Commission and Board of Trustees meeting details. An item of discussion and clarification at the Planning Commission hearing was the timing of the newspaper posting. The notification was submitted and published online with the newspaper within the required timeframes, even though the printed paper is delayed. Notices were also posted around town in accordance with notification requirements.

Since the initial variance request was submitted, modifications have been made and additional information presented than what was available with staff's original Planning Commission analysis. Our analysis in this Town Board memorandum reflect the additional information received.

### ***825 Lake Avenue - Variance Request #2 and Additional Accessory Structure Size Variance***

The property is located on a unique lot with three sides of public right-of-way frontage, including Lake Avenue on the south and east, and the public alleyway to the north. The proposed use and layout for the lot is reasonable based on the proximity adjacent to the Commercial zone district (across the public alleyway to the north) where there are no front, side, or rear setback requirements. There are other properties along the alleyway with structures adjacent to the alleyway within the Commercial zone district to the north and east. The Commercial Transition zone district is intended to serve as a transition from the Commercial district to the adjacent residential areas surrounding downtown. Providing alley-loaded garages and a trash enclosure closer than the required 20-foot rear (alley) setback is consistent with the character and design of the alleyway. However, all variance needs should be taken into consideration.

- If a variance is considered, a minimum five-foot setback should be preserved as there are concerns and questions as to the actual width of the alleyway and ability to safely navigate the public space. This may be problematic to the long-term goals for the alley use and safety.
- Based on best available data, the total square footage of 825 Lake Avenue is 7,081, with a buildable area (excluding setback areas) of 4,409, resulting in the maximum allowed accessory structure size of 441 square feet. The current proposal contains 1,777 square feet which is almost four times the allowed size in code. While the function and use seems reasonable, the size is problematic considering the criteria for evaluating a variance request and compatibility.

### ***Leatherwood Development Proposal – Variance Requests #1, #3, #4, and #5***

The requested variances have the potential to align with Goals and Strategies from the Comprehensive Plan related to fostering quality development, supporting the local economy, availability of diverse



housing units, and extension/use of existing community services and facilities. As the final design is still being refined, it is unclear whether the proposal can achieve the Comprehensive Plan Goal and Strategy aimed at preserving the character of the community through design. The applicant worked on refine the design over the past few months working through preliminary review and Sketch Plan review by the Board and Planning Commission. As a result, many elements align with this goal, but there are still questions related to the overall mass, as expressed by the Planning Commission and community members. This is more difficult to assess at this time but is an important consideration with the requested maximum height variance.

- Variance #1 analysis – Off-site open space credit using a portion of 825 Lake Avenue.
  - This parcel is located approximately one and a half blocks west of the project site and could serve as a reasonable off-site open space area once improved by the applicant. This site would continue to establish pedestrian linkages for residents between neighborhoods further west and south with the trail that runs along Cairns Avenue into the downtown core area. This site could also provide meaningful open space to adjacent residences depending on the final design and amenities proposed.
- Variance #2 analysis – Continue the use of the ground floor residential unit along Lake Avenue within the front 50 feet of the building.
  - The property has historically served as a residential unit along Lake Avenue, and it seems reasonable to allow the nonconforming use to continue as part of the overall redevelopment and improvements proposed by the applicant. The location along Lake Avenue during the colder seasons may limit the viability of additional commercial spaces beyond what exists and is being proposed with the preliminary Leatherwood program for the site.
- Variance #4 analysis – Maximum building height allowance of up to 52 feet for Building 1 and over 43 feet for the proposed renovations to the Event Center along Lake Avenue.
  - The southern portion of the property along Lake Avenue includes a substantial grade change from those properties along Grand Avenue to the north. The code allows 5 feet of additional building height to accommodate topography changes such as this site. The applicant has provided step-backs on the upper levels from Lake Avenue and adjacent public spaces to reduce the impact of a four-story vertical structure along Lake Avenue. Architectural features such as roof pitches and dormers that match the design characteristics of the surrounding areas continue to compliment the downtown character. The ground floor off Lake Avenue is a partial level due to the steep grade changes from the alleyway today and as proposed. In comparison to properties to the west, the first level of this property is below grade as Garfield drops to meet the lake. Eagles Landing a block to the west is shown for comparison of overall height, as well as the existing on-site tree house property. The unique topography and proximity as a transition between the lake level and the rest of downtown along Grand Avenue provide unique circumstances worth consideration. Additional perspectives and visuals were provided by the applicant for the last Planning Commission meeting that are included in this packet. Preserving two stories along Grand Avenue as presented blends in with the rest of the downtown character and provides a transition to potential height considerations at the alleyway.
- Variance #5 analysis – classification as Open Space Group III versus Group IV.





- Based on the project location in the core downtown area, it is reasonable to allow and encourage a reduction to the on-site open space requirements for the following considerations: 1) many of the existing downtown core properties were historically constructed with zero lot lines and minimal on-site open space due to the nature of downtown areas. 2) the project is located adjacent and across the street to the downtown plaza on Grand Avenue and the boardwalk, open space, and beach along Lake Avenue. 3) the preliminary plans show an intentionally designed, publicly accessible open space connecting Grand Avenue to the lake with access to future commercial, office, and residential units creating a walkable and inviting environment.

### **Planning Commission Recommendation**

The Planning Commissions held a public hearing on the variance requests during a meeting on January 8, 2025, as the first regular meeting would have fallen on January 1, 2025, a Town Holiday. Following presentations by staff, the applicant, public comments, and Planning Commission discussions, the Commission requested additional information from the applicant to support their deliberations. The Commission continued the meeting to February 5, 2025. At the February 5<sup>th</sup> meeting, Commission members reviewed the additional information from the applicant (attached) and listed to further community feedback on the variance requests.

Following nearly six and a half hours of community feedback and Commission member deliberations between the two meetings, the Planning Commission forwarded the following recommendations to the Town Board.

- The Commission forwarded a recommendation of approval for the following variance requests by a 4 to 2 vote; to allow the adjustment to the on-site open space land area requirements (Variance #5), to allow the off-site open space credit (Variance #1), and to allow the first-floor residential unit to remain as presented (Variance #3).
- The Commission forwarded a recommendation of denial for the follow variance requests by a 4 to 2 vote; to allow the encroachment into the side and rear setbacks at 825 Lake Avenue (Variance #2), to allow an increase in the maximum size of an accessory structure at 825 Lake Avenue (Staff Identified Variance #2.b), and for an increase in the maximum building height for the Leatherwood development site (Variance #4), based on the following findings of fact:
  - The variances do not meet all of the requirements of Sec. 12-3-5(A).4; and
  - The variances do not meet the criteria of Sec. 12-2-27(B).3., such as
    - compatibility with the surrounding area;
    - harmony with the character of the neighborhood;
    - serving a determined need; and
    - overall effect of the proposed action upon future development in the area.

Commission members did discuss the denied elements at great length before making their recommendation, asking staff and the applicant for clarifications as needed. The Commission summarized that the applicant would be able to design and orient the accessory structure on the site at 825 Lake Avenue to meet the setbacks and be closer to the maximum accessory structure size. Further discussion occurred around the Leatherwood project site's height variance and considerations for stepping back the upper floors along Garfield and the overall relation to other properties in the area. Ultimately, the overall height and mass of the proposed design with the fourth floor was the primary



concern. Commission members did appreciate the pitched roof approach to complement the existing buildings in the area and the illustrations showing two stories along Grand Avenue.

### **Board of Trustees Consideration**

Board members are encouraged to evaluate the variance requests, taking into account staff analysis, the applicant's presentation, public comments during the public hearing, the recommendations of the Planning Commission, and the findings of fact from the code in making their determination.

Municipal Code Section 12-3-5(A)4 outlines the considerations for dimension variance requests such as relief from setbacks and height requirements.

Sec. 12-3-5(A)4. Variances may only be granted if all of the following conditions are found to exist:

- (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 Municipal Code Zoning Regulations; and
- (b) Literal interpretation of the provisions of Municipal Code Zoning Regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the Municipal Code; and
- (c) The special conditions and circumstances do not result from the actions of the applicant; and
- (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; and
- (e) The granting of the variance does not pose a detriment to the public good and does not substantially impair the intent and purpose of Municipal Code Zoning Regulations.

For those requests not associated with dimension criteria, the Board should take into account the following factors when 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.

### **Sample Board of Trustees Motions**

#### Approval with or without conditions

I move to approve Resolution 11-2025, a resolution approving the zoning regulation variances on Lot 12, Block 12 Grand Lake Subdivision, more commonly referred to as 825 Lake Avenue, and the Leatherwood Development Site located on Lots 4-6, Block 5 Grand Lake Subdivision and Lots 9-14, Leatherwood Inn by the Lake Subdivision, more commonly referred to as 1016 Grand Avenue and 1001, 1005, and 1007 Lake Avenue.

... with the following conditions:

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Denial *(establishing findings of fact based on specific code sections and requirements)*

I move to approve Resolution 11-2025, a resolution denying the zoning regulation variances on Lot 12, Block 12 Grand Lake Subdivision, more commonly referred to as 825 Lake Avenue, and the Leatherwood Development Site located on Lots 4-6, Block 5 Grand Lake Subdivision and Lots 9-14, Leatherwood Inn by the Lake Subdivision, more commonly referred to as 1016 Grand Avenue and 1001, 1005, and 1007 Lake Avenue, based on the following findings of fact:

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Or, the Board may choose to approve certain variance requests and deny others as part of the same motion, similar to the Planning Commission's recommendation. For any denial, findings of fact are required based on the code.