



Date: November 15th, 2023
To: Chairman Shockey and Commissioners
From: Kim White, Planning Department

RE: **QUASI JUDICIAL (PUBLIC HEARING):** A Resolution Recommending Granting A Variance To Roadway Regulation 11-2-6 Allowing A Non-Conforming Driveway At 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 Commission
4. Take all public comment
5. Close the Public Hearing
6. Have Commission discuss amongst themselves
7. Commission make a motion

Location Map





Wall Height and Location Graphic

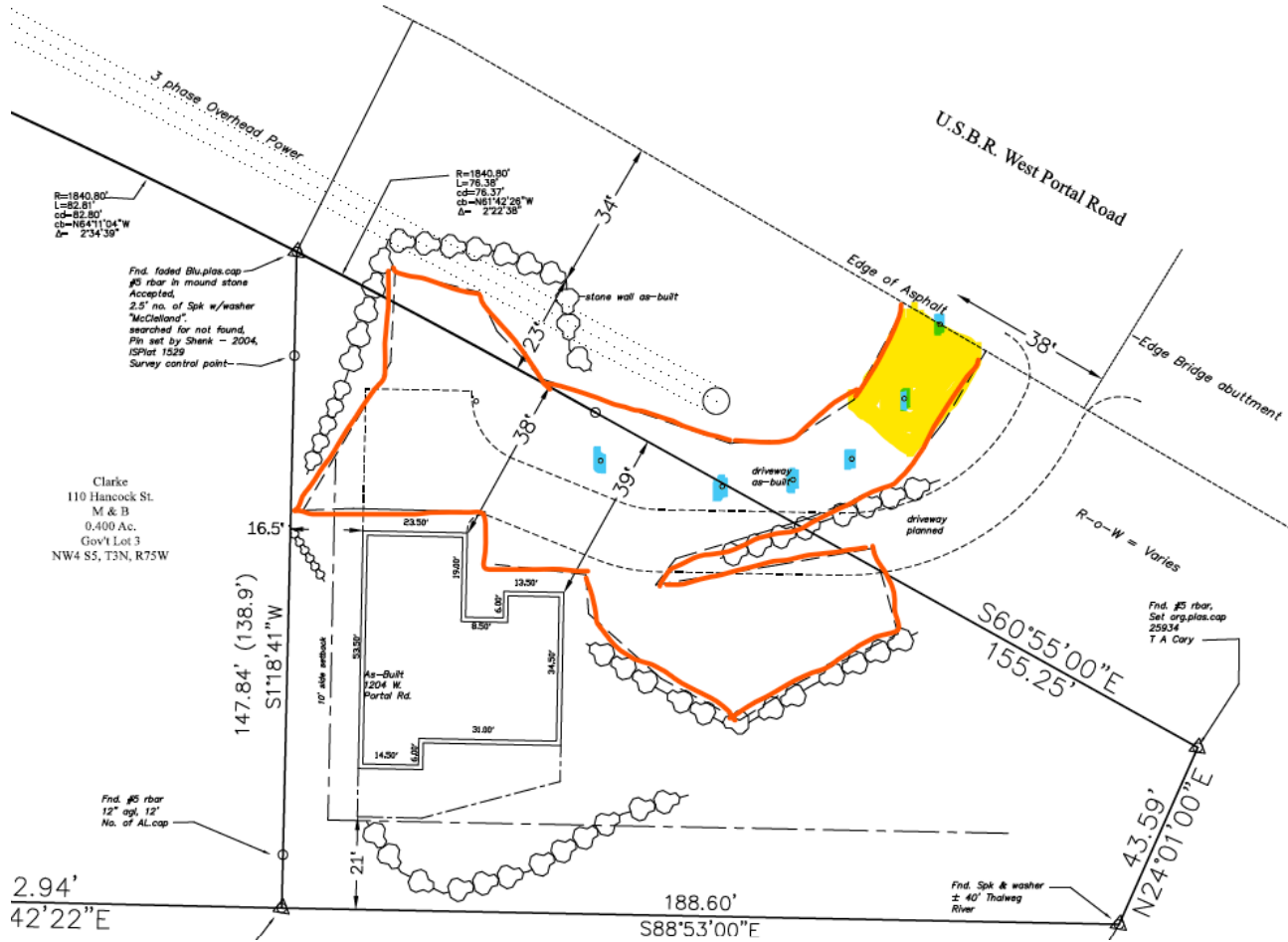


Figure 1- orange line is the existing conditions. Yellow highlight and Blue dots align with the yellow lines and blue dots in fig. 2 for reference points. Dashed line is the original driveway plan.

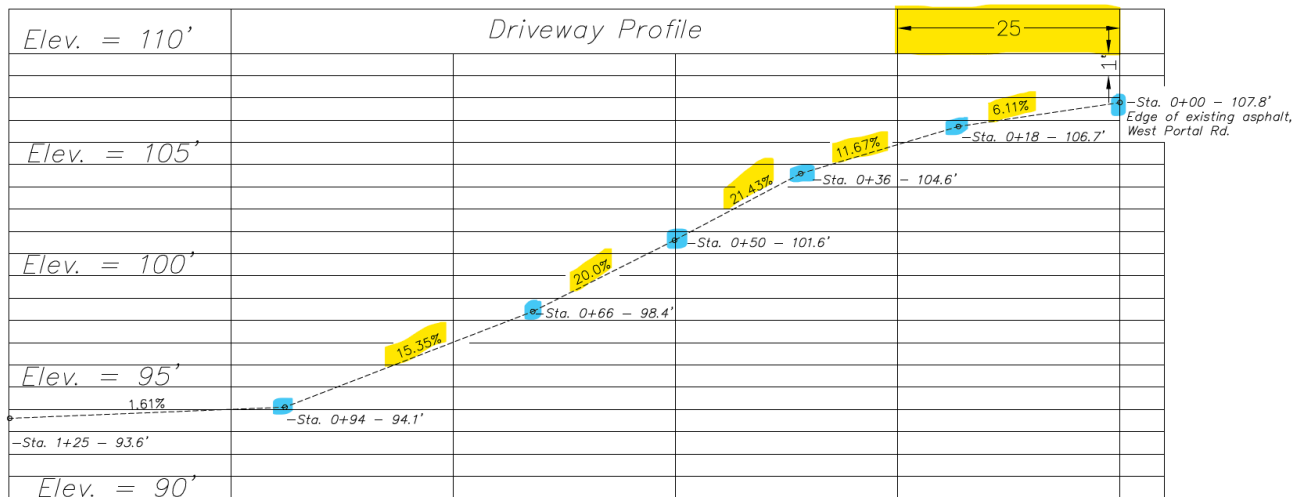


Figure 2



Purpose

The Town has received a variance request from Cynthia A. Biersdorfer and Keith Nichols to permit a driveway at a grade of over 10% after the first 25 feet, as well as over 4% for the first 25 feet. Per Municipal code 11-2-11, this request requires Planning Commission review and Board Approval.

Context

The property is located at 1204 West Portal Rd. The property is approximately 0.4 acres located adjacent to the Tonahutu Creek and zoned Single Family Residential High Density.

Background

At the August 16th, 2023 Planning Commission Hearing for a variance request to allow retaining walls higher than 6', it was shown that the grade of the driveway exceeded Town Standards of 10% after the first 25' of drive. The Planning Commission voted 5:1 to recommend the Board of Trustees to approve the retaining wall height, however an additional hearing for the steepness of the driveway was required. The applicant obtained exact grade topography and submitted a request for the variance on 10/13/2023. Public notice was sent to neighbors within 200' of the property and no one responded with positive or negative input. Electric, gas, sewer and water utilities were all contacted, and they do not have issue with these variances.

Municipal Code:

11-2-6 Private Drives, Emergency Access Requirements, and Criteria.

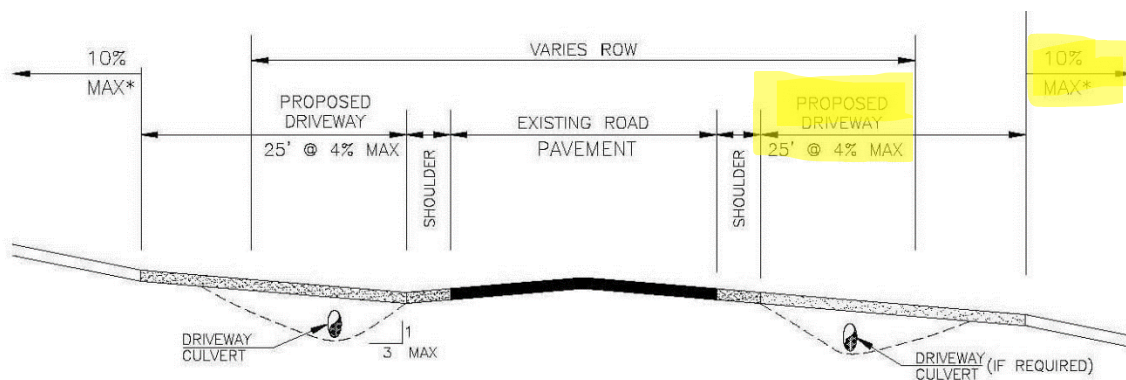
(A) *Criteria for Access Onto Town of Grand Lake Roadways.*

10. *Minimum Design Standards.*

(a) *Residential Driveways.*

6. *An access shall not exceed a four percent (4.0%) grade for the first twenty-five (25) feet, measured from the edge of the nearest drive lane. (See Figure 12.)*

Figure 12: Driveway Grade Criteria



***Heated driveways, maximum grade 12%**



11-2-11 Variance Request and Procedure.

If an applicant responsible to the Town for public improvements desires to design and construct such improvements in variance to criteria in these standards, each variance shall be identified in the initial submittal.

- (A) *Application. An application for a variance shall be filed with Town Staff no later than twenty-one (21) days prior to the next regularly-scheduled Planning Commission meeting...*
- (B) *Planning Commission Review. Variances from the Street Development Policies, Standards, and Specifications shall be reviewed by the Planning Commission at a Public Hearing and make a recommendation to the Board of Trustees.*
 - 1. *Fifteen (15) days prior to the scheduled Public Hearing date, legal notice shall be placed in the local newspaper of general circulation advertising the time, date, and location of the Public Hearing.*
 - 2. *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.*
- (C) *Board of Trustees Review. The Board of Trustees shall grant no variance without first receiving a recommendation from the Planning Commission. The Board may opt to hold a Public Hearing before granting the variance.*
- (D) *Hardships for Consideration. Variance requests will only be granted if the applicant can demonstrate all of the following:*
 - 1. *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;*
 - 2. *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.*
 - 3. *That the special conditions and circumstances do not result from the actions of the applicant;*
 - 4. *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;*
 - 5. *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.*

Staff Comments

After receiving the driveway elevation profile, Staff noted that, of the first 25 feet of the driveway, the first 18 feet of the driveway was at 6.11% and the remaining 7 feet was at 11.67%. The allowance for grade in the first 25 feet is 4%. Also, the driveway grade ranged up to 21.43% after the first 25 feet, while the code requires no more than 10% for unheated driveways (section 11-2-6 Figure 12 of the municipal code). The Planning Commission has already recommended approval for the excessive height of the retaining walls that are reinforcing the driveway and encroachment licenses for the boulders placed in the Town Right of Way are handled solely by the Board.

A public hearing was properly noticed in the Middle Park Times and the Town has received 13 of the 18 notices that were sent to neighboring properties within 200'. 1 comment was received in favor of the excessive grade, no negative comments were received.

The Applicant has submitted the topographic survey of the driveway as required.



Staff received all required items for the request:

1. Appropriate Fee and/or deposit; and
2. Signed Agreement for Services; and
3. A site plan and/or survey; and
4. The applicable Municipal Code Standard to be waived; and
5. A letter explaining the Hardships for Consideration associated with the variance request. (attached)

Commission Discussion

The Commission should discuss the findings of fact from the code 11-2-11 (D) (1-5), in order to make a decision/recommendation.

1. 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;
2. 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.
3. That the special conditions and circumstances do not result from the actions of the applicant;
4. 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;
5. 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.

Suggested Commission Motion

Motion to approve Resolution 10-2023, a variance to Municipal Code 11-2-6 to allow the grade of the driveway to remain at 6.11% and 11.67% in the first 25 feet and up to 21.43% after the first 25 feet at 1204 West Portal Rd.

OR

Motion to approve Resolution 10-2023, a variance to Municipal Code 11-2-6 to allow the grade of the driveway to remain at 6.11% and 11.67% in the first 25 feet and up to 21.43% after the first 25 feet at 1204 West Portal Rd. with the following conditions:

OR

Motion to Deny the Request for Variance.