



**TOWN OF WINTER PARK
BOARD OF ADJUSTMENT
Tuesday, April 11, 2023 8:00 AM
Immediately Following Planning Commission**

A G E N D A

- I. **Call to Order**
- II. **Roll Call of BOA Members**
- III. **Minutes:** March 14, 2023
- IV. **General Business:**
 - A. Consideration of Resolution 2, Series 2023 A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE TOWN OF WINTER PARK ADOPTING FINDINGS OF FACT RELATED TO THE DENIAL OF A VARIANCE TO REDUCE THE SIDE YARD SETBACKS FOR 365 LIONS GATE DRIVE
 - B. Consideration of Resolution 3, Series 2023 A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE TOWN OF WINTER PARK PARTIALLY APPROVING A VARIANCE AND ADOPTING FINDINGS OF FACT RELATED TO APPROVAL OF A VARIANCE TO REDUCE THE BUFFERYARD REQUIRMENTS FOR THE ENTIRETY OF THE SOUTH AND WEST BUFFERYARDS AND FOR A PORTION OF THE NORTH BUFFERYARD AND ADOPTING FINDINGS OF FACT RELATED TO DENIAL OF A VARIANCE TO REDUCE THE BUFFERYARD REQUIREMENTS FOR THE ENTIRETY OF THE EAST BUFFERYARD FOR 365 LIONS GATE DRIVE
 - C. Consideration of Resolution 4, Series 2023 A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE TOWN OF WINTER PARK ADOPTING FINDINGS OF FACT RELATED TO THE DENIAL OF A VARIANCE TO CONSTRUCT TANDEM PARKING SPACES AND TO REDUCE THE SETBACK BETWEEN PARKING SPACES AND RIGHTS-OF-WAY FOR 365 LIONS GATE DRIVE

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MINUTES

DATE: Tuesday, March 14, 2023.

MEETING: Winter Park Board of Adjustment.

PLACE: Town Hall Council Chambers and Zoom Meeting Call.

PRESENT: Chair Dave Barker, Members Christopher Tagseth, Doug Robbins, Roger Kish and Angela Sandstrom, Community Development Director James Shockey, Town Planner Hugh Bell and Town Attorney Austin Pierce Flanagan (via Zoom). Vice-Chair Brad Holzwarth is absent today.

OTHERS

PRESENT: Irene Kilburn, Planning and Building Technician II

I. **Call to Order.**

Chair Dave Barker called the meeting to order at 9:53 a.m.

II. **Roll Call of BOA Members.**

Vice-Chair Brad Holzwarth is absent today.

III. **Minutes:**

Member Sandstrom makes a motion to approve the consent agenda. Member Robbins seconds. The consent agenda is approved 5, 0.

IV. **General Business:**

- a. **Consideration of Resolution 1, Series 2023 A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE TOWN OF WINTER PARK APPROVING A VARIANCE AND ADOPTING FINDINGS OF FACT RELATED TO APPROVAL OF A VARIANCE TO REDUCE THE SIDE CORNER YARD SETBACK FOR 36 LAKE TRAIL**

The BOA Members talk about the time the applicant has to execute the variance if approved. The Staff and the BOA discuss what the variance is about (carport).

BOA Member Robbins makes a motion to approve this variance. Member Sandstrom seconds. The variance is approved 4,1 with Member Kish voting nay.

- b. **PUBLIC HEARING: Setback Variance Request – 365 Lions Gate Drive – Tract 3, Miller Subdivision (PLN23-010)**

Director Shockey explains to the BOA how this item in the agenda should be addressed. Since these items are in close relation to the next two following items on the agenda, they will be discussed jointly.

Planner Bell begins his presentation by highlighting the main information included in the Staff Report. This information has been sent to the members in advance for their review. Planner Bell also reads a brief outline about what this project is about. There was a discrepancy about the mailing address for a neighbor. However, the Staff did their best effort to send public notifications to all parties involved. Based on what was read at this point, the Staff is recommending denying this Setback Variance Request.

Member Robbins makes a motion to deny this Setback Variance Request – 365 Lions Gate Drive – Tract 3, Miller Subdivision (PLN23-010) due to the lack of evidence for hardship and that the plight of the owner is not due to an unusual circumstance. Member Sandstrom seconds. The Setback Variance Request – 365 Lions Gate Drive is denied 5,0.

c. PUBLIC HEARING: Landscape Bufferyard Variance Request – 365 Lions Gate Drive – Tract 3, Miller Subdivision (PLN23-011)

Planner Bell begins his presentation by highlighting the main information included in the Staff Report. Planner Bell mentions that comments were received. Staff partially supports this Setback Variance Request. Planner Bell shows the bufferyards on the screen to describe better why the Staff has a partial recommendation for two of the bufferyards: south and west. All this information was sent previously to the Members for their review. Based on that, the Staff recommends the denial of this variance request.

The applicant, Mr. William MacDonald comes forward. He is the owner of the property. Mr. MacDonald has a presentation for the BOA. Mr. MacDonald makes emphasis on the financial hardship if this variance is denied. He also mentions the removal of the existing house. Mr. MacDonald continues with his presentation making emphasis on the tandem parking spaces. Mr. MacDonald then shows some alternatives for the BOA's consideration.

The BOA Members have a conversation with Mr. MacDonald about elevations and drainage.

The Public Comment is open at this point. Mr. Doug Moore and Ms. Barbara Lawler come forward. Both are owners in Braidwood Condominiums directly north. They would like this variance to be denied due to the impact on the surrounding area.

Ms. Kim Konkel comes forward on Zoom. She is also an owner in Braidwood. She concurs with the comments made by Mr. Moore and Ms. Lawler and adds she has concerns about drainage, the tandem parking, and landscaping. She has some concerns about the tandem configuration in case of an emergency.

The Public Comment period is closed at this point.

Mr. MacDonald comes forward one more time. He describes how the tandem spaces would work.

The BOA and the Staff have a conversation about the trash enclosures, site plan, parking and the possible scenarios resulting from approving one or some of the variance requests submitted by the applicant. A condition could be added that the tandem spaces should be assigned to specific units. The proximity of construction to property lines is discussed.

The BOA discusses the possibility of asking the applicant to review the design. The BOA Members have a conversation about the criteria that must be met in order to grant the variances. Planner Bell explains how the denial needs to be stated.

The Town Attorney, Mr. Flanagan, gives his advice to the BOA in order to make an informed decision.

Member Kish makes a motion to approve this Landscape Bufferyard Variance Request – 365 Lions Gate Drive – Tract 3, Miller Subdivision (PLN23-011) for the entirety of the south and west bufferyards and for a portion of the north property line for some distance to be determined by staff to accommodate the existing structure and the EGFPD access road width requirement. The request is denied for the east bufferyard. Member Robbins seconds. The Landscape Bufferyard Variance Request – 365 Lions Gate

Drive is partially approved 5,0.

d. PUBLIC HEARING – Tandem Parking Variance Request – 365 Lions Gate Drive – Tract 3, Miller Subdivision (PLN23-012)

This item on the agenda was mentioned along with the two previous items. The conversation expands more and includes engineer comments, diagrams, spaces required and snow storage. The BOA Members talk about possible encroachments, meeting the four criteria, implementation and other items.

The BOA Members then discuss the four criteria for this property. Planner Bell states that a separate administrative variance request would need to be submitted and approved by staff to allow vehicles to back up onto Lions Gate Drive, which is classified as a “major collector” road, as backing vehicles up onto major collector roads is prohibited in the Standards and Specifications for Design and Construction in Section 4.3.3, Driveway Location and Approach.

Member Sandstrom makes a motion to deny this Tandem Parking Variance Request – 365 Lions Gate Drive – Tract 3, Miller Subdivision (PLN23-012) due to the lack of evidence for hardship. Member Robbins seconds. The variance is denied 4,1 with Member Kish voting nay.

There being no further business to discuss, upon a motion regularly adopted, the meeting was adjourned at 11:20 a.m.

The next scheduled meeting of the Board of Adjustment will be Tuesday, April 11th, 2023, after the Planning Commission meeting.

Irene Kilburn, Planning and Building Technician II

**TOWN OF WINTER PARK
BOARD OF ADJUSTMENT
RESOLUTION NO. 2
SERIES OF 2023**

**A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE TOWN OF
WINTER PARK ADOPTING FINDINGS OF FACT RELATED TO THE DENIAL
OF A VARIANCE TO REDUCE THE SIDE YARD SETBACKS FOR 365 LIONS
GATE DRIVE**

WHEREAS, pursuant to the Unified Development Code (the "UDC") § 5-A-4, the Board of Adjustment is authorized to grant variances from the requirements of Title 7 of the UDC;

WHEREAS, § 3-A-3 of the UDC states that side yard setbacks in the Destination Center (D-C) zone district shall be at least five feet (5');

WHEREAS, on February 16, 2023, William MacDonald (the "Applicant"), as the owner of the real property more particularly described in **Exhibit A** (the "Property"), filed an application for a variance to allow a new structure to encroach into the side yard setbacks by four feet and three inches (4'-3") on the south side and three feet and six inches (3'-6") on the north side (the "Application");

WHEREAS, on March 14, 2023, the Board of Adjustment held a properly-noticed public hearing on the Application; and

WHEREAS, after considering the Application, presentations by Town staff and the Applicant, and public comment, the Board of Adjustment denied the Application and hereby adopts the following findings of fact in support of such denial.

NOW THEREFORE BE IT RESOLVED by the Board of Adjustment as follows:

1. Findings. The Board of Adjustment hereby finds and determines that the Application fails to meet the criteria set forth in § 5-F-3(F) of the UDC that would justify a variance, more particularly:

- a. The Applicant did not demonstrate a hardship preventing the building from adhering to the building setback requirement. They submitted an incomplete Preliminary Plat Application on July 13, 2021, prior to the Unified Development Code (UDC) being adopted on June 7, 2022 via Ordinance 575 and coming into effect on June 12, 2022. For properties zoned D-C, the previous land use code, Title 7, Zoning Regulations, allowed for 0' yard setbacks for the front, side, and rear; the UDC amended this to require a 5' side yard setback. Because the Preliminary Plat Application was an incomplete application, it was not distributed for agency review. § 8-2-3(C)(3) from the previous land use code dictated that preliminary plat applications shall be complete to be distributed. When the Major Site Plan Application was submitted on July 8, 2022 and deemed complete on July 15, 2022, the UDC was in effect. As required by the UDC, § 1-B-1(C), Pending Applications, only development applications deemed complete by the Director prior to the UDC's adoption shall be reviewed under the previous regulations, i.e., the previous land use code, Title 7, and the previous subdivision code, Title 8.

- b. The Applicant did not demonstrate an unusual circumstance preventing the building from adhering to the building setback requirement. The Applicant has essentially attributed the need for a setback variance to their delay in submitting a complete application while the previous land use code was still in place.

2. Decision. The Board of Adjustment hereby adopts the foregoing findings of fact in its **denial** of the variance requested in the Application.

PASSED, ADOPTED, AND APPROVED this 11th day of April 2023.

BOARD OF ADJUSTMENT

David Barker, Chair

ATTEST:

Danielle Jardee, Town Clerk

Exhibit A
Legal Description of Property

Tract 3, Miller Subdivision, County of Grand, State of Colorado

**TOWN OF WINTER PARK
BOARD OF ADJUSTMENT
RESOLUTION NO. 3
SERIES OF 2023**

A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE TOWN OF WINTER PARK PARTIALLY APPROVING A VARIANCE AND ADOPTING FINDINGS OF FACT RELATED TO APPROVAL OF A VARIANCE TO REDUCE THE BUFFERYARD REQUIREMENTS FOR THE ENTIRETY OF THE SOUTH AND WEST BUFFERYARDS AND FOR A PORTION OF THE NORTH BUFFERYARD AND ADOPTING FINDINGS OF FACT RELATED TO DENIAL OF A VARIANCE TO REDUCE THE BUFFERYARD REQUIREMENTS FOR THE ENTIRETY OF THE EAST BUFFERYARD FOR 365 LIONS GATE DRIVE

WHEREAS, pursuant to the Unified Development Code (the "UDC") § 5-A-4, the Board of Adjustment is authorized to grant variances from the requirements of Title 7 of the UDC;

WHEREAS, § 3-I-5 of the UDC states that in the D-C zone district, a Type A bufferyard is required for the north lot line, a Type B bufferyard is required for the south and east lot lines, and a Type C bufferyard is required for the west lot line, with Type A being the least intensive bufferyard and Type C being the most intensive bufferyard;

WHEREAS, § 3-I-5 of the UDC states that new residential development is required to provide an increase in the level of screening of a bufferyard (e.g., from Type A to Type B) when adjacent to an existing single-family detached, duplex, multiplex, or single-family attached residential property or development, if the housing type that is located on the lots that are adjacent to the existing development is more dense than the housing type of the existing development (e.g., new townhouse lots adjacent to existing single-family detached lots);

WHEREAS, on February 16, 2023, William MacDonald (the "Applicant"), as the owner of the real property more particularly described in **Exhibit A** (the "Property"), filed an application for a variance to allow for reduced plantings for the north, south, east, and west bufferyards, more particularly, along the north bufferyard, four (4) fewer evergreen trees and five (5) fewer deciduous trees, along the south bufferyard, three (3) fewer evergreen trees, two (2) fewer deciduous trees, and nine (9) fewer shrubs, along the east bufferyard, three (3) fewer evergreen trees and seven (7) fewer shrubs, and along the west bufferyard, four (4) fewer evergreen trees, four (4) fewer deciduous trees, and 29 fewer shrubs, and to encroach into the required bufferyard widths for the north, south, and west bufferyards, more particularly by 5' into the 5' required north bufferyard, by 9'-4" into the 10' required south bufferyard, and by 4' into the 10' required west bufferyard (the "Application");

WHEREAS, on March 14, 2023, the Board of Adjustment held a properly noticed public hearing on the Application; and

WHEREAS, after considering the Application, presentations by Town staff and the Applicant, and public comment, the Board of Adjustment partially approved the Application, as further described in the Decision section below, and hereby adopts the following findings of fact in relation to the decision.

NOW THEREFORE BE IT RESOLVED by the Board of Adjustment as follows:

1. Findings. The Board of Adjustment hereby finds and determines that a portion of the Application, for the north, south, and west bufferyards, meets the applicable criteria set forth in § 5-F-3(F) of the UDC, more particularly:

- a. The strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship that would deprive the Applicant of privileges enjoyed by the owners of other properties in the same zone district because given the current proposed site plan, the Applicant is required to have an aerial apparatus access road by East Grand Fire Protection District No. 4 and is required to have a water quality and detention pond due to stormwater conveyance requirements;
- b. That the granting of the variance will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity because fewer plantings will allow for the necessary aerial apparatus access road width and for compliance with stormwater conveyance requirements;
- c. The plight of the owner is due to unusual circumstances at the property of the variance that do not generally apply to other properties in the same zone district because the Property's topographical and natural features and the requirement for an aerial apparatus access road render a portion of the Property unusual as compared to other properties, causing it to be impractical to meet the bufferyard requirements in their entirety; and
- d. That the granting of the variance will not alter the essential character of the locality because the Property contains adequate vegetation in the areas where the variance is granted.

2. Findings. The Board of Adjustment hereby finds and determines that a portion of the Application, for the east bufferyard, fails to meet the criteria set forth in § 5-F-3(F) of the UDC that would justify a variance, more particularly:

- a. The Applicant did not demonstrate that the essential character of the locality will not be altered because the lack of landscaping on this east bufferyard would create a large triangle of surface-level hardscaping, which is out of character in the D-C zone district. Furthermore, the east lot line is the most visible from the public right-of-way, i.e., Lions Gate Drive, where it is crucial to lesson visual impacts; and
- b. The Applicant did not demonstrate a hardship preventing this east bufferyard from adhering to the bufferyard requirements.

3. Decision. Based on the foregoing findings, the Board of Adjustment hereby **approves** the variance for a portion of the north bufferyard and for the entirety of the south and west bufferyards, subject to the following conditions:

- a. A building permit for construction of the structure described in the Application shall be issued on or before April 11, 2024. If a building permit is not issued within such time, the variance granted herein shall automatically terminate without further action by the Town.
 - b. Neither this Resolution nor the variance granted herein creates any vested rights under statute or common law.
 - c. This Resolution shall be recorded in the records of the Grand County Clerk and Recorder within 30 days of approval.
 - d. The Property's "Type A" north bufferyard, as defined in the UDC, shall not be required for 133' of the north lot line, that is, starting from the northeast property corner and terminating 133' west of there. In the case of an issue of interpretation, the Planning Director, in their sole discretion, shall have the authority to determine the minimum number of plantings and width applicable to the north bufferyard on the Property.
4. Decision. The Board of Adjustment hereby incorporates the above findings of fact in its **denial** of the portion of the east bufferyard variance not specifically approved in subsection 3(d) herein.

PASSED, ADOPTED, AND APPROVED this 11th day of April, 2023.

BOARD OF ADJUSTMENT

David Barker, Chair

ATTEST:

Danielle Jardee, Town Clerk

Exhibit A

Legal Description of Property

Tract 3, Miller Subdivision, County of Grand, State of Colorado

**TOWN OF WINTER PARK
BOARD OF ADJUSTMENT
RESOLUTION NO. 4
SERIES OF 2023**

**A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE TOWN OF
WINTER PARK ADOPTING FINDINGS OF FACT RELATED TO THE DENIAL
OF A VARIANCE TO CONSTRUCT TANDEM PARKING SPACES AND TO
REDUCE THE SETBACK BETWEEN PARKING SPACES AND RIGHTS-OF-
WAY FOR 365 LIONS GATE DRIVE**

WHEREAS, pursuant to the Unified Development Code (the "UDC") § 5-A-4, the Board of Adjustment is authorized to grant variances from the requirements of Title 7 of the UDC;

WHEREAS, § 3-H-5 of the UDC does not include tandem parking spaces as a permitted parking configuration;

WHEREAS, § 3-H-5 of the UDC states that all parking areas shall have a fifteen feet (15') setback from all rights-of-way;

WHEREAS, on February 16, 2023, William MacDonald (the "Applicant"), as the owner of the real property more particularly described in **Exhibit A** (the "Property"), filed an application for a variance to allow a tandem parking configuration and to allow a parking area to encroach into the 15' setback required between the parking area and the Lions Gate Drive right-of-way by ten feet and four inches (10'-4") (the "Application");

WHEREAS, on March 14, 2023, the Board of Adjustment held a properly-noticed public hearing on the Application; and

WHEREAS, after considering the Application, presentations by Town staff and the Applicant, and public comment, the Board of Adjustment denied the Application and hereby adopts the following findings of fact in support of such denial.

NOW THEREFORE BE IT RESOLVED by the Board of Adjustment as follows:

1. Findings. The Board of Adjustment hereby finds and determines that the Application fails to meet the criteria set forth in § 5-F-3(F) of the UDC that would justify a variance, more particularly:
 - a. The Applicant did not demonstrate a hardship preventing the parking area from adhering to the parking design standards.
 - b. The granting of the variance will be detrimental to public safety to properties or improvements in the vicinity as the parking configuration for the three (3) sets of tandem parking spaces east of the existing dwelling unit will increase the likelihood of accidents, as vehicles will need to back out onto a major collector roadway. Additionally, the parking area's 4'-8" distance from Lions Gate Drive may create difficulty for snow plowing operations.

2. Decision. The Board of Adjustment hereby adopts the foregoing findings of fact in its **denial** of the variance requested in the Application.

PASSED, ADOPTED, AND APPROVED this 11th day of April 2023.

BOARD OF ADJUSTMENT

David Barker, Chair

ATTEST:

Danielle Jardee, Town Clerk

Exhibit A
Legal Description of Property

Tract 3, Miller Subdivision, County of Grand, State of Colorado