



**TOWN OF WINTER PARK
BOARD OF ADJUSTMENT
Tuesday, June 13, 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:** May 9, 2023
- IV. **General Business:**
 - A. Consideration of Resolution 5, Series 2023, A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE TOWN OF WINTER PARK APPROVING A VARIANCE TO REDUCE THE BUFFERYARD REQUIREMENTS FOR THE ENTIRETY OF THE SOUTH AND EAST BUFFERYARD FOR LOT 1, NORTH BENCH MINOR SUBDIVISION AND ADOPTING FINDINGS OF FACT THERETO

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Public Hearing Process

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MINUTES

DATE: Tuesday, May 9, 2023.

MEETING: Winter Park Board of Adjustment

PLACE: Town Hall Council Chambers and Zoom Meeting Call

PRESENT: Chair Dave Barker, Vice Chair Brad Holzwarth, Members Thomas McDonald, Roger Kish, and Angela Sandstrom, Community Development Director James Shockey, Town Planner Hugh Bell and Town Attorney Hilary Graham (via Zoom).

OTHERS

PRESENT: Irene Kilburn, Planning and Building Technician II

I. **Call to Order.**

Chair Dave Barker called the meeting to order at 9:16 a.m.

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

All Members are present. BOA Member Chris Tagseth recuses himself from the BOA Meeting today since he is currently involved with the company in charge of the landscaping for East Grand Fire Protection District No. 4 South Station – Lot 1, North Bench Minor Subdivision (PLN23-037). Vice Chair Brad Holzwarth indicates that he is not involved in the project; he just works for the East Grand Fire Protection District. The BOA Members feel comfortable with this explanation.

III. **Minutes:**

Vice Chair Holzwarth makes a motion to approve the minutes from April 11, 2023. Member Sandstrom seconds. The minutes are approved 5, 0.

IV. **General Business:**

A. **PUBLIC HEARING: Landscape Bufferyard Variance Request – Unaddressed – East Grand Fire Protection District No. 4 South Station – Lot 1, North Bench Minor Subdivision (PLN23-037)**

Town Planner Hugh Bell begins his presentation by outlining the background and the main points that best describe the scope of this project. He discusses the measurements and the arguments the applicant considers necessary for the BOA's consideration. Finally, Planner Bell lists the staff recommendation, which is threefold and as follows:

Staff recommends the BOA approve the variance request for Portions E1, E2, E3, E4, and E5 on the east lot line with two conditions:

1. All new trees shall be mature and exceed the minimum size requirements outlined in Table 3-I-3-1, Minimum Size of Plants at Installation. New deciduous trees shall have a minimum caliper size of two

inches (2") and new evergreen trees shall have a minimum height of eight feet (8').

2. Five feet (5') of the parking lot shall be permitted to encroach into required 25' bufferyard width.

Staff recommends the BOA approve the variance request for Portion S1 on the south lot line with one condition:

1. All new trees shall be mature and exceed the minimum size requirements outlined in Table 3-I-3-1, Minimum Size of Plants at Installation. New deciduous trees shall have a minimum caliper size of two inches (2") and new evergreen trees shall have a minimum height of eight feet (8').

Lastly, staff recommends the BOA deny the variance request for Portion S2 on the south lot line.

The BOA asks the Staff for clarification regarding some of the public comments received. Then, the Staff and the BOA go over the details of portion S2 on the Site Plan. The BOA and the Staff talk about snow management in this area.

The applicants, Mr. Scott Munn and Mr. Todd Holzwarth, on behalf of East Grand Fire Protection District No. 4, come forward. Mr. Munn has a presentation that talks about portion S2. Mr. Munn explains their arguments for the proposed configuration for portion S2.

The public comments session is open at this point. There are no comments from the public. The public hearing is closed.

The BOA Members then discuss the Staff Report and agree with what the Staff has suggested in terms of granting the variances in the Staff Report. Planner Bell explains to the BOA what information needs to be submitted in order to recommend approval for portion S2. The BOA and the Staff discuss some details about the landscape configuration.

Mr. Todd Holzwarth comes back and provides additional information to the BOA about the reasoning for requesting a variance on portion S2. Planner Bell talks about the reasoning behind the bufferyards and how they are calculated. The BOA and the Staff talk about shrubs requirements. The applicant says that they can plant more trees if necessary. The BOA then discusses the possibility of moving some elements like the existing swale.

BOA Member Holzwarth makes a motion to approve the variance request for portions E1- E5 with two staff recommendations. Approve the variance request for portion S1 with one recommendation and approve the variance request for portion S2. BOA Member McDonald seconds. The vote is 3-2 and without a super majority the motion does not carry and the variance is not approved.

Member Kish makes a motion for approval of Portions E1-E5 and of Portion S1 with staff's recommended conditions, and for approval of Portion S2 with the condition that trees, shrubs, and bufferyard width may be reduced by twenty-five percent (25%). Member Kish cites staff's reasoning provided in the staff report for why the variances should be granted. Member Sandstrom seconds. The motion carries and is approved 5,0.

There being no further business to discuss, upon a motion regularly adopted, the meeting was adjourned at 10:24 a.m.

The next scheduled meeting of the Board of Adjustment will be Tuesday, June 13, 2023, after the Planning Commission meeting.

Irene Kilburn, Planning and Building Technician II

**TOWN OF WINTER PARK
BOARD OF ADJUSTMENT
RESOLUTION NO. 5
SERIES OF 2023**

A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE TOWN OF WINTER PARK APPROVING A VARIANCE TO REDUCE THE BUFFERYARD REQUIREMENTS FOR THE ENTIRETY OF THE SOUTH AND EAST BUFFERYARD FOR LOT 1, NORTH BENCH MINOR SUBDIVISION AND ADOPTING FINDINGS OF FACT THERETO

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 R-2 zone district, a Type B bufferyard is required for the west lot line, a Type C bufferyard is required for the south lot line, and a Type D bufferyard is required for the east lot line, with Type B being the least intensive bufferyard and Type D being the most intensive bufferyard;

WHEREAS, on May 8, 2023, East Grand Fire Department (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 south and east bufferyards, more particularly, along the south bufferyard, sixteen (16) fewer evergreen trees and sixteen (16) fewer deciduous trees, and along the east bufferyard, thirty-seven (37) fewer evergreen trees, thirty-eight (38) fewer deciduous trees, and two hundred (200) fewer shrubs, as well as encroachment by 4'-6" into the 25' required east bufferyard (the "Application");

WHEREAS, on May 9, 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 the Application 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 for the east lot line, the permanent CDOT easement makes it difficult to plant trees there knowing they may be damaged or removed at any point due to CDOT maintaining this area and that CDOT wouldn't be liable for any such damages or removal. For the south lot line, this area is part of the southeast property corner, which significantly narrows down and precludes a compliant bufferyard from existing

there. Additionally, the drainage swale there, which is required for proper stormwater conveyance, comprises most of the corner and is close to the lot line and therefore, it also precludes trees and shrubs being planted there;

- 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 not having landscaping is not hazardous;
- 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 for the east lot line, the CDOT easement is an unusual circumstance as most properties facing Highway 40 do not contain such an easement. For the south lot line, the unusual shape of this lot corner is an unusual circumstance as most lot corners aren't angled as acutely; and
- d. That the granting of the variance will not alter the essential character of the locality because for the east lot line, there are no residences that will see the east lot line (given Antlers at Lakota has an existing large mature bufferyard) and no landscaping has existed here before. For the south lot line, given there will be some trees planted here and the lot line is not demarcated, the character of the locality won't be altered.

2. Decision. Based on the foregoing findings, the Board of Adjustment hereby **approves** the variance for the entirety of the east bufferyard (i.e., Portions E1, E2, E3, E4, and E5) and south bufferyard (i.e., Portions S1 and S2), subject to the following conditions:

- a. For Portions E1, E2, E3, E4, and E5 on the east lot line, with two conditions:
 - 1. All new trees shall be mature and exceed the minimum size requirements outlined in Table 3-I-3-1, Minimum Size of Plants at Installation. New deciduous trees shall have a minimum caliper size of two inches (2") and new evergreen trees shall have a minimum height of eight feet (8').
 - 2. Five feet (5') of the parking lot shall be permitted to encroach into required 25' bufferyard width.
- b. For Portion S1 on the south lot line, with one condition:
 - 1. All new trees shall be mature and exceed the minimum size requirements outlined in Table 3-I-3-1, Minimum Size of Plants at Installation. New deciduous trees shall have a minimum caliper size of two inches (2") and new evergreen trees shall have a minimum height of eight feet (8').
- c. For Portion S2 on the south lot line, with one condition:
 - 1. The number of trees and shrubs, as well as the bufferyard width, may be reduced by twenty-five percent (25%).

- d. A building permit for construction of the structure described in the Application shall be issued on or before June 13, 2024. If a building permit is not issued within such time, the variance granted herein shall automatically terminate without further action by the Town.
- e. Neither this Resolution nor the variance granted herein creates any vested rights under statute or common law.
- f. This Resolution shall be recorded in the records of the Grand County Clerk and Recorder within 30 days of approval.

PASSED, ADOPTED, AND APPROVED this 13th day of June, 2023.

BOARD OF ADJUSTMENT

David Barker, Chair

ATTEST:

Danielle Jardee, Town Clerk

Exhibit A
Legal Description of Property

Lot 1, North Bench Minor Subdivision, County of Grand, State of Colorado