



**TOWN OF WINTER PARK
BOARD OF ADJUSTMENT
Tuesday, August 12, 2025 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:** July 8, 2025
- IV. General Business:**
 - A. RESOLUTION No 4, Series 2025 - Accessory Structure Variance Request – 438 Leland Creek Way (PLN25-052)
 - B. RESOLUTION No 5, Series 2025 - Overhead Utility Variance Request – 47 Village Drive (PLN25-033)

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Public Hearing Process

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**TOWN OF WINTER PARK
BOARD OF ADJUSTMENT
Tuesday, July 8, 2025 8:00 AM
Immediately following Planning Commission**

MINUTES

DATE: Tuesday, July 8, 2025.

MEETING: Winter Park Board of Adjustment

PLACE: Town Hall Council Chambers and Zoom Meeting Call

PRESENT: Chair Dave Barker, Members Shawn Cullingford, Dale McCaw (Alternate), Tom McDonald and Eric Mowrey (Alternate) are present. Also present are Community Development Director James Shockey, Senior Planner Brian Kelly, Planner II Adam Springer and Town Attorney Mr. Kunal Parikh.

OTHERS

PRESENT:

I. Call to Order

Chair Barker called the meeting to order at 8:39 a.m.

II. Roll Call of BOA Members

All BOA Members are present today.

III. Conflicts of Interest.

No one comes forward.

VI. Minutes: June 10, 2025

Commissioner Robbins moves, and Commissioner McDonald seconds the motion approving the consent agenda. Motion carries 5,0.

IV. General Business:

A. PUBLIC HEARING – Accessory Structure Variance Request – 438 Leland Creek Way (PLN25-052)

Planner Kelly presents the Variance Request to the BOA. He gives a brief outline of the Variance submittal for this accessory structure (not ADU). No comments were received prior to this meeting. Planner Kelly reads the request narrative, the applicant's reasons as to why this variance should be granted, the criteria that should be met for this variance to be approved by the BOA and, finally, the Staff findings and recommendations. In conclusion, the Staff has found that the applicant has met the mandatory criteria for approval

The applicant is not present.

Chair Barker opens the Public Comment Period. Mr. Doug Jones (Leland Creek resident) comes forward. Mr. Jones would like the BOA to deny this Variance request since he considers that the applicant chose to build the main dwelling in its current location. This is not a hardship created by

the land but by the decision of the owner to build there. Mr. Jones also considers that the Variance, if granted, will alter the character of the neighborhood. Mr. Jones believes one owner receiving special treatment and will possibly open the door for similar variance requests in the future. Floorplans were not included and finally, Mr. Jones concludes that this Variance has more to do with personal preference than real hardship.

Chair Barker closes the Public Comment Period.

The BOA then starts the conversation by mentioning that, down the road, this dwelling can be turned into an ADU without the Planning and/or Building Divisions to be notified. The BOA and the Staff have a conversation where these types of situations have indeed occurred in the past.

Then, the BOA discusses whether there have been occasions where a property owner requests a variance to be allowed to build a structure in front of the lot. The key point is whether the new structure would be connected to the main dwelling as opposed to this applicant's proposal. The BOA also mentions the role of the HOA in this request. The BOA discusses the accuracy of the renderings. The Staff informs the BOA that the applicant was suggested to attach the proposed structure to the main dwelling so it would have been a Minor Site Plan as opposed to a Variance Request, but they declined.

The BOA then starts to go over the criteria. The BOA members go into more detail about the shape, easements and overall configuration of this piece of property. The BOA members analyze the four criteria in relation to this Variance Request. The BOA arrives at the conclusion that all the criteria have been met

BOA Member McDonald makes a motion to approve the Accessory Structure Variance Request – 438 Leland Creek Way (PLN25-052). BOA Member McCaw seconds. Motion carries 5, 0.

B. PUBLIC HEARING – Overhead Utility Variance Request – 47 Village Drive (PLN25-033)

Planner Kelly presents the Variance Request to the BOA. Planner Kelly reads a summarized version of the Variance Request and the steps that were taken by the applicant and the Staff to make this Variance known to the public. The applicant is asking the BOA to allow an existing overhead power line owned and managed by Mountain Parks Electric to be relocated and to remain in an overhead condition in contravention to the requirements established in the UDC §3-C-2-4 *Utilities* and §4-A-10(H) *Telephone, Fiber-optic, and Electric Lines*. Planner Kelly continues his presentation by highlighting the main bullet points of this Variance request and one (1) condition that must be met by the applicant of this Variance Request regarding the cost recovery if Town were to incur cost to bury in the future: An agreement between the Town and the developer-beneficiary.

The BOA and the Staff have a brief conversation about the technical details that could arise if the Variance is granted. The BOA then asks the Staff why the Variance process was chosen instead of a different approach. Director Shockey explains to the BOA that the nature of the technicalities indicated that the best way to address this request was a Variance Request.

The applicant, Mr. Richard Epstein, on behalf of the developer, comes forward. Mr. Epstein has a presentation for the BOA in which he details the existing power line configuration and the proposed powerline modification. Mr. Epstein makes a comparison between the two. Then, the next slide illustrates the site plan proposed at 47 Village Drive. Mr. Epstein confirms that the Developer would be paying twice for the costs associated with this power line relocation if the Variance is granted. The next slide demonstrates the arguments that, according to the Developer, support how the criteria have been met for approval

Chair Baker opens the Public Comment Period. Ms. Claire O'Neill comes forward. Ms. O'Neill would like to see the line underground. She also mentions the possibility of trees to be cut down and the financial impact on the surrounding properties.

Mr. Jeff (he did not write his name on the attendance form) comes forward. Jeff supports Ms. O'Neill's comments. He would like the BOA to consider the potential hazards of this proposal in terms of aesthetics and fire.

Mr. Robert Blay (online) comes forward. He is associated with CMC Property Management. Mr. Blay acknowledges that the effort the BOA is putting into reviewing this Variance request. Mr. Blay adds that they support the previous members of the public's comments.

Mr. David W. (virtual. He did say his last name, and is not heard clearly); we asked to type his last name on the Zoom chat but we got no answer) comes forward. Mr. W. has a question about the notification that the homeowners were supposed to receive. Mr. W. also would like more information about revegetation and the impact on the existing trees.

Chair Barker closes the Public Comment period.

Mr. Tom Rowe from Terrex Development & Construction comes forward. He respectfully requests the BOA to grant this Variance and consider the details of the Cost Recovery Agreement.

The applicant, Mr. Epstein comes forward and he gives more details about tree preservation. The trees to be cut down will be within the developable property area, any clearing associated with powerline relocation will be at the behest Mountain Parks Electric (MPEI).

The BOA and the Staff start discussing the easements, the topology and the property lines along with the applicant in order to have a better grasp of the proposed relocation of the power lines. There is also mention of the costs associated and the Town Council role in this Variance Request. The BOA continues to evaluate this request by analyzing the diagram on the screen that shows the existing and proposed power lines. There is mention of how future developments can be impacted. The BOA Members have a conversation about stitching and how this method would be the more beneficial and minimize the cost for the applicant, however this "degrades power distribution"; Board Member Cullingford takes issue with this MPEI explanation.

Member Cullingford moves to approve Overhead Utility Variance Request – 47 Village Drive (PLN25-033) with the condition added by the Staff: At time of preliminary plat application, draft and execute a Cost Recovery Agreement, between the Town and the Developer (developer-beneficiary), self correcting and striking the aforementioned condition. BOA Member Robbins seconds. The motion carries 5,0.

C. RESOLUTION No 3, Series 2025- Side Setback Variance Request – Lot 2 and Lot 3,
Block 1, Roam Filing 1 (PLN25-042)

Member Robbins moves, and Member McDonald seconds, a motion to approve the Resolution No 3, Series 2025- Side Setback Variance Request – Lot 2 and Lot 3, Block 1, Roam Filing 1 (PLN25-042), based on the conditions that will be placed on the property with the approval resolution. The motion carries 5,0.

There being no further business to discuss, Member Robbins makes motion to adjourn, Member Cullingford seconds motion, by unanimous "aye", the meeting is adjourned at 10:16 a.m.

The next scheduled meeting of the Board of Adjustment will be Tuesday, August 12, 2025, after the Planning Commission meeting.

**TOWN OF WINTER PARK
BOARD OF ADJUSTMENT
RESOLUTION NO. 4
SERIES OF 2025**

**A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE TOWN OF
WINTER PARK APPROVING A VARIANCE TO PERMIT AN ACCESSORY
STRUCTURE TO BE PLACED IN FRONT OF THE PRINCIPAL BUILDING
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, pursuant to § 2-B-4 of the UDC, an accessory structure must be set back a minimum of ten feet (10') behind the rear facade of the principal building;

WHEREAS, on June 16, 2025, Tyler and Whitney Huber (the "Applicant"), as the owner of the real property more particularly described in **Exhibit A** (the "Property"), filed an application for a variance to locate an accessory structure approximately 10 feet 11 inches in front (southeast) of the front façade of the principal building and extending 70 FT to the southeast and the access drive of Leland Creek Way. The proposed accessory structure is compliant with all other development standards, including minimum setbacks from property lines. (the "Application");

WHEREAS, on July 8, 2025, the Board of Adjustment held a properly noticed public hearing on the Application; and

WHEREAS, after considering the Application, presentation by Town staff, and public comment, the Board of Adjustment 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 undue hardship that would deprive the Applicant of privileges enjoyed by the owners of other properties in the same zone district, because an existing structure being built within the confines of a narrow lot and to the rear of said lot prior to the adoption of the UDC accessory structure requirements, which presents an unreasonable burden;
 - 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 the location on private property does not have additional impacts to the greater community or adjacent properties

- c. The plight of the owner is due to unusual circumstances at the Property that do not generally apply to other properties in the same zone district, because the prior construction of the principal structure further back on the lot inhibits the proper location of the accessory structure to the rear of the single-family residence; and
- d. That the granting of the variance will not alter the essential character of the locality, because the accessory structure remains consistent with the architectural and planning intent of earlier development of the principal structure. The structure will continue to contribute positively to the single-family dwelling unit and the Leland Creek Subdivision.

2. Decision. Based on the foregoing findings, the Board of Adjustment hereby **approves** the variance, subject to the following conditions:

- a. A Building Permit for improvements described in the Application shall be issued on or before July 8, 2026. 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.

PASSED, ADOPTED, AND APPROVED this 12th day of August 2025.

BOARD OF ADJUSTMENT

David Barker, Chair

ATTEST:

Danielle Jardee, Town Clerk

Exhibit A

Legal Description of Property

Lot 32, Leland Creek Subdivision
438 Leland Creek Way

**TOWN OF WINTER PARK
BOARD OF ADJUSTMENT
RESOLUTION NO. 5
SERIES OF 2025**

**A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE TOWN OF
WINTER PARK APPROVING A VARIANCE TO RELOCATE AN OVERHEAD
UTILITY TO BE MAINTAINED AS SUCH 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, pursuant to § 3-C-2-4 *Utilities* and § 4-A-10(H) *Telephone, Fiber-optic, and Electric Lines* of the UDC, whereby telephone, fiber-optic cable, electric transmission lines, distribution feeder lines, communication trunk lines, television cables, and similar utility installations shall all be placed underground;

WHEREAS, on April 7, 2025, Terrex Real Estate Services, LLC (the "Applicant"), as the representative for Winter Park Enterprises, LLC (the "Owner") of the real property more particularly described in **Exhibit A** (the "Property"), filed an application for a variance to relocate an existing overhead power line owned and managed by Mountain Parks Electric, Inc. ("MPEI") to be relocated and to remain in an overhead condition (the "Application");

WHEREAS, on July 8, 2025, the Board of Adjustment held a properly noticed public hearing on the Application; and

WHEREAS, after considering the Application, presentation by Town staff and the Applicant, and public comment, the Board of Adjustment 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 undue hardship that would deprive the Applicant of privileges enjoyed by the owners of other properties in the same zone district, because compliance is encumbered by a third party preferred installation and maintenance of electrical equipment above ground, which presents an unreasonable burden;
 - 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 the relocation does not alter the use or impact the community beyond the existing easement boundaries;

- 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 Overhead Utility ("OHU") serves a greater community population and placing underground will degrade the ability to provide power to that community. To effectively meet the UDC requirements a longer underground line would require extensive resources across multiple private property ownership; and
 - d. That the granting of the variance will not alter the essential character of the locality because it is a pre-existing condition and adjacent developments are presently being served by the OHU.
2. Decision. Based on the foregoing findings, the Board of Adjustment hereby **approves** the variance, subject to the following conditions:
- a. A Major Site Plan for improvements described in the Application shall be issued on or before July 8, 2026. If a Major Site Plan 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.

PASSED, ADOPTED, AND APPROVED this 12th day of August, 2025.

BOARD OF ADJUSTMENT

David Barker, Chair

ATTEST:

Danielle Jardee, Town Clerk

Exhibit A
Legal Description of Property

47 VILLAGE DRIVE, TOWN OF WINTER PARK

A PARCEL OF LAND BEING A PORTION OF THE SOUTH 1/2 OF SECTION 33, TOWNSHIP 1 SOUTH, RANGE 75 WEST, AND ALL OF THE LAND DESCRIBED IN WARRANTY DEED RECORDED JANUARY 7, 1982 IN BOOK 304 AT PAGE 545, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EASTERLY MOST CORNER OF BEAVER VILLAGE - FILING NO. 2 AT WINTER PARK; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE SOUTH LINE OF LOT 15, BLOCK 2 OF HIDE-AWAY PARK A DISTANCE OF 393.64 FEET TO A POINT ON A CURVE-THE CENTER OF WHICH BEARS SOUTH 71 DEGREES 38 MINUTES 48 SECONDS WEST, SAID POINT ON CURVE BEING A POINT ON THE WESTERLY RIGHT-OF-WAY OLD U.S. HIGHWAY NO. 40; THENCE ALONG SAID WESTERLY RIGHT-OF-WAY THE FOLLOWING COURSES; SOUTHEASTERLY ALONG A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF D DEGREES 38 MINUTES 01 SECONDS, RADIUS OF 3,371.59 FEET, THE LONG CHORD BEARING SOUTH 18 DEGREES 01 MINUTES 53 SECONDS EAST A DISTANCE OF 37.28 FEET; THENCE SOUTH 16 DEGREES 55 MINUTES 26 SECONDS WEST A DISTANCE OF 170.72 FEET; THENCE SOUTH 14 DEGREES 00 MINUTES 24 SECONDS EAST A DISTANCE OF 236.10 FEET; THENCE SOUTH 14 DEGREES 50 MINUTES 54 SECONDS EAST A DISTANCE OF 80.00 FEET TO A POINT ON THE NORTHERLY LINE OF BEAR VILLAGE FILING NO. 1 AT WINTER PARK; THENCE THE FOLLOWING COURSES ALONG THE NORTHERLY LINE; THENCE NORTH 87 DEGREES 47 MINUTES 49 SECONDS WEST A DISTANCE OF 16.92 FEET TO A POINT OF CURVE; THENCE NORTHWESTERLY ALONG A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 16 DEGREES 20 MINUTES 49 SECONDS, A RADIUS OF 354.04 FEET, THE LONG CHORD BEARING NORTH 79 DEGREES 37 MINUTES 24 SECONDS WEST A DISTANCE OF 100.67 FEET TO A POINT OF TANGENCY; THENCE NORTH 71 DEGREES 27 MINUTES 00 SECONDS WEST A DISTANCE OF 172.90 FEET TO A POINT OF CURVE; THENCE WESTERLY ALONG A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 40 DEGREES 02 MINUTES 06 SECONDS, A RADIUS OF 262.18 FEET, THE LONG CHORD BEARING SOUTH 88 DEGREES 31 MINUTES 57 SECONDS WEST A DISTANCE OF 179.49 TO AN ANGLE POINT ON THE EASTERLY MOST BOUNDARY OF SAID FILING NO. 2; THENCE NORTH 3 DEGREES 25 MINUTES 57 SECONDS EAST ALONG SAID EASTERLY MOST BOUNDARY, A DISTANCE OF 436.79 FEET TO THE **POINT OF BEGINNING**. EXCEPT ANY PORTION OF THE FOREGOING DESCRIPTION WHICH LIES WITH THE LAND DESCRIBED IN WARRANTY DEED RECORDED AUGUST 2, 1983 IN BOOK 333 AT PAGE 17. COUNTY OF GRAND. STATE OF COLORADO