

**PARK CITY MUNICIPAL CORPORATION
BOARD OF ADJUSTMENT
445 MARSAC AVENUE
CITY HALL COUNCIL CHAMBERS
March 21, 2017**



AGENDA

MEETING CALLED TO ORDER - 5:00 PM

ROLL CALL

ADOPTION OF MINUTES OF February 21, 2017

PUBLIC COMMUNICATIONS – *Items not scheduled on the regular agenda*

STAFF AND BOARD COMMUNICATIONS/DISCLOSURES

339 Park Avenue – Applicant is requesting a variance to Section 15-2.2-3(E) Rear Yard Setbacks and Section 15-2.2-3(H) Side Yard Setbacks of the Park City Land management Code (LMC) for the purpose of constructing a two story deck on the rear addition of a “Significant” historic house. PL-16-03418 33
*Planner
Grahm
Withdrawn no action taken*

REGULAR AGENDA – *Discussion, possible public hearing, and possible action as outlined below*

277 McHenry Avenue – Variance request to raise the square footage of the Accessory structure from allowable 700 sq. ft. to 1,164 sq. ft. and a 5’ rear yard setback decrease from the zone requirement of 10’. PL-16-03358 35
*Planner
Hawley
Public hearing and possible action*

ADJOURN

A majority of Board of Adjustment members may meet socially after the meeting. If so, the location will be announced by the Chair person. City business will not be conducted.

Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the Park City Planning Department at (435) 615-5060 24 hours prior to the meeting.

PARK CITY MUNICIPAL CORPORATION
BOARD OF ADJUSTMENT
MINUTES OF FEBRUARY 21, 2017

BOARD MEMBERS IN ATTENDANCE: Ruth Gezelius – Chair; Hans Fuegi,
David Robinson, Mary Wintzer

EX OFFICIO: Planning Director Bruce Erickson, Anya Grahn, Planner; Hannah
Tyler, Planner; Makena Hawley, Planner; Polly Samuels McLean, Louis
Rodriguez

ROLL CALL

Chair Gezelius called the meeting to order at 5:00 p.m. and noted that the Board
did have a quorum.

ADOPTION OF MINUTES

October 18, 2016

Chair Gezelius noted that approval of the October 18, 2016 Minutes were
continued at the last meeting pending clarification requested by Jennifer Franklin.
She assumed the clarification was made to the satisfaction of Ms. Franklin, who
was absent this evening.

Planning Director Bruce Erickson noted that after the Minutes were continued,
the person preparing the minutes was asked to review the recording. She
reported that the Minutes as typed were substantially in compliance with the
Minutes as recorded. The verbatim comments taken from the recording were
sent to Jennifer Franklin for her review and comment. He did not believe the
Planning Department had heard back from Ms. Franklin. Director Erickson
stated that Ms. Franklin may have been waiting to read her comments into the
record at the next meeting, but she was not present and had given no indication
to the Planning Department that she had comments.

Chair Gezelius stated that having received no formal objection from Ms. Franklin,
she called for a motion to approve the Minutes of October 18, 2016 as presented.

MOTION: Board Member Wintzer moved to APPROVE the minutes of October
18, 2016 as written. Hans Fuegi seconded the motion.

VOTE: The motion passed unanimously.

January 17, 2017

MOTION: Board Member Robinson moved to APPROVE the Minutes of January 17, 2017 as written. Board Member Fuegi seconded the motion.

VOTE: The motion passed unanimously.

PUBLIC COMMUNICATIONS

There were no comments.

STAFF/BOARD MEMBERS COMMUNICATIONS AND DISCLOSURES

There were no comments or reports.

REGULAR MEETING – Discussion, Public Hearing and Possible Action

227 Main Street (Star Hotel)—Appeal of Historic Preservation Board’s Determination that the structure should be designated as “Significant” on the City’s Historic Sites Inventory (HSI). (Application PL-16-03330)

Planner Anya Grahn reported that in September 2015 the Appellant, who is also the owner, submitted an application for a Determination of Significance to remove the Star Hotel from the Park City Historic Sites Inventory. The removal would allow for the demolition of the Star Hotel in order for the site to be redeveloped. The structure is listed on the Historic Sites Inventory, and the Staff stands on the position that the building is historic and should remain listed as Significance.

Planner Grahn stated that the Historic Preservation Board met on November 2, 2016, and they also found that it met the criteria outlined in the LMC to be designated as Significant.

Planner Grahn remarked that she and Planner Tyler would walk through the developmental history of the building to help the Board understand how this issue has progressed into what it is today. She noted that the history of the building and how it came to be was outlined in the Staff report. She wanted it clear that the Staff was not arguing for the historical significance of the original cross wing house. That house has largely lost its historic integrity because it was consumed by the Boarding House that appeared in 1920. The features of the building that remain today reflect a conscious decision to create the Spanish revival style boarding house that is seen today. The layout of the small bedrooms and large living space relate to the form and organization of the interior spaces of a boarding house. The location on Main Street is significant as it was surrounded by other boarding houses and provided an amenity to lodgers of being close to the mines, as well as to laundries and eateries. Planner Grahn stated that the

Board House retains its overall feeling as defined by the National Park Service as it is an expression of aesthetic and historical sense of period.

Planner Grahn reviewed slides showing the original 1907 cross wing structure, and noted that portions of that form would be seen as they show future progression. The cross wing was built by Sarah and John Huy as the historic house and it was one of the first houses in Park City. When the Huy's moved to Colorado in 1920 they sold it to Joe Grover, a prosperous Chinese Landowner. The Staff report talked about the significance of Mr. Grove. Planner Grahn remarked that the official sale was recorded to the Allende's in 1937. This was not uncommon because a lot of times in Park City the titles and deeds were not recorded until decades after the sale had occurred.

Planner Grahn stated that by 1920 the Board House form had appeared. It was in the Spanish Revival Style as evidenced by the white stucco walls, the arcades with arch windows and columns, and the overall form of the building.

Planner Grahn presented slides showing the changes that were made by the Rixie family by 1977 and which are still present in the building. In 1976 the Rixie's rebuilt portions of the front of the building and the original arcades and open porches became enclosed porches and windows. Stucco covers the back foundation and the open railing of the stairway.

Planner Hannah Tyler presented slides showing the evidence that is still present in the building from the historic period. The Staff provided this same analysis to the Historic Preservation Board and that Staff report was linked to the BOA Staff report for this meeting. Planner Tyler noted that in doing the analysis they went level by level on the front façade because it is a complex side of the building. She noted the red shaded areas in all of the slides were the areas that the Staff finds to be historic and still remain either underneath or on the surface of the building.

Beginning with the basement and foundation area, Planner Tyler presented a photo showing the rock and stone foundation. She indicated a column that was actually 221 Main Street, and pointed out that it was only the column. Everything behind that column was 227 Main Street. She presented a photo showing the Rixie's covering the façade with stucco. Planner Tyler commented on the areas covered in stucco, but clarified that based on evidence on the interior, the Staff finds that there is still stone underneath. In another photo, Planner Tyler indicated a window next to the original garage doors. She noted that the Staff was able to find evidence of the railing, which could be seen in the tax photo.

Planner Tyler moved to the second and third levels. The Staff finds that the historic wall plane is still present, even though it is part of the enclosed porch, and it is considered an interior wall rather than an exterior wall. The tax photo showed the areas that the Staff finds still remain. They were able to find a cross

canyon view that they believed was taken in the 1930's, which showed the original wall planes on the upper level. Planner Tyler stated that the window openings were converted to archways, and they also converted the original front door to a non-historic front door with side lights. Historic posts were visible in two locations based on evidence from the interior of the building.

Planner Tyler commented on the roof and thought it was important to note that there was still the arched Spanish style cornice, which was preserved as part of the 1977 remodel. She again presented the cross canyon view and pointed out the hip roof and the historic house cross wing in the back. Planner Tyler stated that the Star Hotel was added to the front of that historic single-family dwelling. She presented a photo that was taken in the 1970s prior to the remodel, which showed that the porch had not yet been enclosed. She also presented a current photo taken this Fall which shows that the roof form still exists. Planner Tyler reviewed additional photos of the roof taken from specific locations.

Planner Grahn stated that the intent of the photos was to look at how this building has progressed. The original 1907 cross wing house was shown in green. The portions shown in red come into play in 1920 when the Star hotel was added to the front of the building. The brown color identified the changes made by the Rixie's in 1977, which included enclosing the porch on the front and building a rear addition that comes up and over the original cross wing.

Planner Tyler noted that the north and south elevations have many of the historic window openings. The historic chimney was still present on the south, which was also present in the cross canyon view from the 1930s. Planner Tyler presented a photo showing that the left window was part of the original cross wing house. On the right of the chimney is where the Star Hotel began. On the north side the cornice is visible, and the historic window openings are still present.

Planner Grahn reviewed the rear elevation and noted that in the back the cross wing created a U shape, with two gables and a connector in the middle. That remained the same through 1920, but in 1977 a portion of it was cut out and the new addition by the Rixie's was added to the top level. Planner Tyler presented a photo showing the original gabled end of the historic single-family dwelling, and where the rectangular addition was added. Where the siding does not match up is where they believe is the location of a historic window opening.

Planner Grahn noted that the green color in the 1920s plan showed where the original house was and how the Star Hotel intersected it at the front. By 1977 half of the gables wings were cut out and filled in with the shed roof of the addition.

Planners Tyler and Grahn provided a brief overview of the criteria and noted that page 46 of the Staff report provided an in-depth description of why the Staff

found that this structure meets the criteria for designation to the Historic Sites Inventory. Planner Grahn noted that in 1982 a National Register Survey was done on this structure and it was found to be non-contributory primarily because it was a drastic change from the folk Victorian architecture that is typically seen in Park City. However, it was identified by Ellen Roberts in another National Register Survey to possibly be eligible. That survey was done in 1995. By 2009 it was included in the Park City Historic Site Inventory as a Significant Building.

Planner Grahn stated that the reason for pointing out the haphazard construction is because of how buildings were built in Park City. As outlined in the Staff report, haphazard or shoddily built, reflects the time period in which it was built. Park City was never meant to be permanent because people expected the mining boom to die out at some point. The haphazard construction and building it yourself reflect the times in which these buildings were built. They were built to satisfy an immediate need. Planner Grahn remarked that in this case, Frank Allende was most likely trying to benefit from the profits of a boarding house during the mining boom era.

Planner Grahn stated that the structure is also associated with prominent individuals. Joe Grove was a prominent Chinese businessman in Park City. Another noteworthy person is Frank Allende, who introduced the Spanish Revival in the Star Hotel and ran the boarding house for some years. Planner Grahn remarked that the building is unique because it was designed in the Spanish Revival style which is rarely seen in Park City.

Todd Cusick, the manager of Westlake Land LLC, noted that Westlake Land is the owner of 227 Main Street. He introduced Matt Hutchinson, legal counsel. Mr. Hutchinson stated that when he purchased this property three years ago, his intent was to restore an old building. One of the first things he did was meet with the family of the deceased, and the family did not want to go through all of the old records that were left in the building. They gave him a key and asked him to do it. Mr. Cusick stated that he found a number of things underneath Mrs. Rixie's bed that told him that this building was not what most people thought it was. He had brought a box this evening that was full of family photo albums, newspaper clippings, and correspondence with the City. The most surprising of all of those was a picture that he presented to the Board of Adjustment. In looking at the photo it was evident that it was not the same building he had purchased; and after that realization he personally started three years of investigation and research.

Mr. Cusick stated that that in the Staff report given to the Historic Preservation Board was the phrase, "the physical characteristics of a structure that make it identifiable. He intended to focus on that issue this evening. Mr. Cusick asked the Board to think about 1) to identify something to preserve, they should be able to see it and not find it in an old photo; 2) Recreation. What do people see when they walk up and down Main Street and look at this building; 3) This should be an

effort of preservation, not re-creation; 4) Can you preserve something that was removed in the 1970's; 5) The assumption that the historically relevant period ended in 1930.

Mr. Cusick believed the Board should have in their packet a sworn affidavit of William Rixie. Mr. Rixie was in his late teens when his parent purchased the structure. William Rixie did most of the work with his dad until it became a big project. He read direct quotes from the affidavit. "In July of 1976 my family removed and replaced the façade of the Staff Hotel with the currently existing façade. The Architectural features that exist today, although similar to the building that existed when my parents purchased it in 1975, are not the same. The architectural features of today's building are a creation of my father, William Rixie". Another quote, "The architectural features such as the window openings, door openings, building materials, etc., that can be seen today are from 1975 to 1977. In 1976 and 1977 my family added the four-story highest level of the building. Prior to that time the third floor was the highest floor of the building." Mr. Cusick provided a photo with another quote from the affidavit. "In this photo, the chimney, which is the only visible architectural feature that exists today from the time my parents purchased the building, can be seen". Mr. Cusick stated that the identifiable physical characteristics of the Star Hotel are roughly 40 years old, according to Mr. Rixie.

Mr. Cusick stated that in 1982, leading up to the first ordinance that Park City had for historical preservation, surveys were done and it was easy to see what Ellen Beasley had concluded. Written on the survey was the conclusion that it was non-contributory. "New façade put on in the depression has been changed again. Treated as new". Mr. Cusick questioned why it was treated as new in 1982 and then treated as historic later on. In the Staff report, the Staff explains away Ms. Beasley's opinion by assuming what she was thinking. Mr. Cusick pointed out that Ms. Beasley had clearly put her opinion in writing. The Staff believes that the determination as due in part because of the changes to the façade, and also because of the Spanish revival style contrasting with the folk Victorian Style. Mr. Cusick did not believe anyone could know or assume what Ms. Beasley was thinking at the time. She made her determination 34 years closer to the situation than the Staff is today. He noted that Ms. Beasley concluded that a new façade was put on in the depression and it was changed again in 1976. Mr. Cusick stated that in 2015 the City hired CRSA Architecture to update the historical site forms. He read a quote from the form, "The historic façade was covered over in a non-historic 1976 alteration, which yielded the appearance that remains today. The alteration detracts from the historical integrity of the building." Mr. Cusick believed the issue being discussed was the historical integrity and authenticity. In that sense, they have an inauthentic building. He noted that today's appearance, the identifiable visible characteristics is 40+ years old.

Mr. Cusick referred to page 46 of the Staff report, which states that the structure was identified to be historic and possibly eligible by Allen Roberts in the 1995 Reconnaissance Level Survey. He presented the form from that survey and indicated the boxes for Mr. Roberts to designate A, B, C or D. He checked C, and then apparently questioned himself and but B with a question mark. Mr. Cusick believed that Mr. Roberts' initial reaction was that this was a C property, which means it may be over 50 years old, but altered and not presently eligible. For whatever reason, Mr. Roberts questioned his own opinion and also put B. Mr. Cusick stated that the structure was first determined as Significant in the 2009 Historic Sites Inventory. He had read minutes from various meetings leading up to that determination, and he found it interesting that the City Council members admitted that they were using a very broad brush in trying to develop a baseline of all the properties that could be historically significant. He recalled an owner who said that she had photographic proof that her house was not historic and it has never been on the significant list. She wanted to know why it was on the list. Mr. Cusick stated that the Mayor told her that they were doing a broad brush approach and each owner would have their chance to explain why their property should not be on the list. Mr. Cusick remarked that no one has ever had that discussion on 227 Main Street. Therefore, today was his opportunity to provide evidence that in 2009 this building should not have been put on the Historic Sites Inventory list.

Mr. Cusick reviewed the guidelines that the City Council had in front of them at that time. It retains its essential historical form, meaning there are no major alterations that have destroyed the essential historical form. Major alterations that destroy the essential historical form include addition of upper stories, or the removal of original upper stories occurred after the period of historical significance. Additions that significantly obscures the essential historical form when viewed. Mr. Cusick stated that if an intensive level survey would have been done in 2009, he believed this building would have been excluded from the listing, and it would have been treated as new, the same as Ms. Beasley treated it in 1982.

Mr. Cusick noted that page 41 of the Staff report has a page devoted to the Boarding House; when the boarding house came to be and the construction. Under the first bullet point that Staff wording is that "it was tacked on to the front of the original cross wing house". Mr. Cusick stated that there is no evidence that the front of the original cross wing house is still there and something is tacked on to the front of it. "The roof of the new structure was haphazardly constructed atop the original cross wing cottage." As he reads that page, he is led to believe that the Staff's position is that when the Boarding House was built on top of the cross wing house, the roof structure was tacked on at that time. Mr. Cusick referred to a paragraph explaining the meaning of haphazard, which Planner Grahn had explained in her presentation.

Mr. Cusick presented photos that he believed showed that the present roof was not from the strike it rich haphazard period. He also had Rixie photos from the 1970s that he found after the HPB meeting. He clarified for the record that the photo was not in his previous presentation. He reviewed the elements shown in the photo and pointed out that there was not a U-shaped building in the back. The Rixie's ripped it off and put on a new roof and a new floor. He provided a series of photos to support his statement. Mr. Cusick stated that it was not haphazard construction. It was built in the 1970s per the Code at that time. Studs were 16" on center and it was normal, modern construction. A membrane roof was added and it is still on the structure today.

Mr. Cusick read from page 37 of the Staff report, "Despite the 1977/1976 conversion of the two-story porch on the façade into an enclosed porch, and the four-story addition in the rear of the building, the 1920s Star Hotel largely maintains its historical form. Though the Rixie's converted the two-story porch in 1976 to an enclosed porch, it largely retained the original dimensions and footprint of the original porch". Mr. Cusick stated that unless Mr. Rixie was being dishonest, he told him that the porch was removed and replaced. He offered to take the Board members on a walk through the building to show where he had removed sheetrock in 26 locations showing the construction of the Rixie's. It has modern wiring, modern insulation and modern studs. It was not a conversion or an enclosure. It was a complete removal and rebuild. Mr. Cusick noted that the Staff report for this evening called it a remodel. He presented a 1976 article from the Park Record which showed the beginning of the removal of the façade. The walkway was removed and the arches were removed. Mr. Cusick stated that Mr. Rixie was telling the truth when he said that his father mimicked or recreated what he thought was there. It was his own architectural version. Mr. Cusick pointed out that the Rixie's received an award for the remodel. He provided additional evidence to show what was built in 1976.

Mr. Cusick referred to the HPB Staff report, and pointed to two posts that the Staff had said were original. He disputed that position and presented photos that he believed showed that it was impossible that they were the same posts. Mr. Rixie told him that a lot of recycled materials was put into the Star Hotel, and his summer job was to straighten nails, pull boards, and haul it up the street so they could use it for construction.

Mr. Cusick noted that the Staff had presented pictorial representation of what was old on the first level. In the first presentation to the HPB, it was not pointed out that the column was actually the Imperial Hotel. He pointed to other areas that the Staff determined were original, and he intended to demonstrate why he disputed that determination as untrue. He commented on issues with the first level in terms of what is old and what is new. He admitted that there may be two rock panels underneath. He did not believe there was any old material on the top. He again offered to take the Board members on a tour to show that it was all new materials.

Mr. Cusick concluded that there was nothing visible on levels one, two and three that is historic and/or original. His conclusion agrees with Mr. Rixie's assessment. Mr. Rixie lived there and he gave sworn testimony to that fact. He reiterated that level on may have two rock panels behind the stucco, but they were not visible. The roof and the façade is from the 1970s. Standing on Main Street you see a building that was created in the 1970s by Mr. Rixie.

Mr. Cusick read from the original Staff report that was given to the HPB, "The original roof form has remained largely unchanged. He stated that the statement was absolutely not true. Level four is the top floor and creates the highest roof line, and it was added by Mr. Rixie. Mr. Cusick presented a satellite image that he had created, and pointed to two places that could potentially be original. The photos he presented earlier prove that the entire level four area is from the 1970s. He thought the photos in the Staff report showed that a good portion of level three were modern materials. He admitted that there is a mixture of materials, but the wafer board plywood was available until 1972. Mr. Cusick believed that more than 85% of the roof was from the 1970s.

Mr. Cusick stated that the Staff report to the HPB Board, which is the decision that he was appealing, took the position that a portion of the west elevation is historic from 1889. He believed that was inaccurate and impossible according to the Sanborn Maps. Mr. Cusick remarked that the chairman of the HPB dismissed his opinion by saying that the Sanborn maps were wrong, and he was surprised by that dismissal. He walked through the Sanborn maps to draw the conclusion that the elevation today could not be the 1889 structure.

Mr. Cusick reviewed the photo he found under Mrs. Rixie's bed, and agreed that it was roughly the same size and shape because it was sandwiched between two buildings. In his opinion, the fact that it has three arch windows was irrelevant because they were not the same size, shape or materials.

After three years of research, Mr. Cusick concluded that there is nothing historical to preserve from the historically significant time period. He summarized that they do know the historic period was 1929 or earlier, but they do not know what the building looked like. There are no photos prior to 1930. Mr. Rixie, as an eyewitness, has said in sworn testimony that the architectural features seen today were created and built by his father. In addition, the 1982 survey by Ellen Beasley determined it was non-contributory, and that the new façade that was put on in the Depression had been changed again in what Mr. Cusick believed was 1976 and treated as new. In 1995 Allen Roberts said it was altered. The CRSA 2015 report called it a non-historic 1976 alteration.

Mr. Cusick referred to the photos on pages 54-97 of the HPB Staff report, and he struggled with the concept of visually compatible. He could find no other structure with similar architecture in any of the photos, and he questioned how

they could call it visually compatible in the historic mining period. Mr. Cusick believed the 2009 determination was an error. If an intensive level survey had been done, it would have been disqualified from the Inventory on the roof issue alone. Mr. Cusick suggested that because so much of the structure has been changed in materials, shape and size, and it should not be considered historic.

Board Member Wintzer asked if Mr. Cusick was aware of the 2009 designation of Significant when he purchased the house. Mr. Cusick answered no. He read it when Planner Tyler sent him an email this summer with some links. Using those links he started drilling down to old meeting minutes. He always questioned how the building went from non-contributory to being on the Inventory as important and historical. He never understood how that happened until this summer.

Board Member Fuegi asked what year Mr. Cusick purchased the building. Mr. Cusick replied that it he closed on the house in December of 2013.

Board Member Robinson noted that Mr. Cusick had stated that he was unaware of the 2009 designation, but his original plan was to restore the historic building. He asked if Mr. Cusick understood or believed that it was historic. Mr. Cusick replied that his understanding of it being historic came when he made his first visit to the Planning Department to obtain all the information about the structure. At that point he was told that it was not a Landmark structure but it was a Significant site. He believed that occurred approximately one month after purchasing the building. Mr. Cusick clarified that he had no communication with the City prior to purchasing the building.

Board Member Fuegi asked if Mr. Cusick's comments about the roof being removed referred to the roof that was removed when the fourth story was built. Mr. Cusick replied that his conversations with Willy Rixie and what he found in the building led him to conclude that the roof was essentially removed. Board Member Fuegi understood that the basic roof area of the front Boarding House remains approximately as it was historically. Mr. Cusick was unsure what it looked like because he had a photo from the 1940s, but not the historic period. Ellen Beasley said it was redone in the Depression, and he assumed that photo captured the remodel and rebuild. It was not the historical period of 1929 and prior. Mr. Cusick reiterated his point that they do not know what the building looked like in its historic period.

Matt Hutchinson believed Mr. Cusick had done a great job providing a factual summary of the current state of the building, and he thought the Staff had done a fair job of depicting what has been there over the years and what is in the record. The Board of Adjustment is sitting in a quasi-judicial role and they are free to consider all of the facts as if they were being heard for the first time. This Board does not need to afford deference to the Historic Preservation Board. Mr. Hutchinson believed the facts show that the essential historical form, whether defined under the 2009 rule of when it was designated or the slightly different

current definition, it has to mean that there are historic materials worth preserving and historic facades that are not just replicas of the historic iterations of the building. Mr. Hutchinson stated that there is no dispute that what someone sees from the other side of Main Street looking at the Star Hotel was not there prior to 1976. They would submit that the window, chimney and the two roof panels do not rise to the level of justifying a Significance designation. Mr. Hutchinson highlighted some of the points in the Appeal letter he had written, which was included on page 54 of the Staff report. The Appellant has seen nothing that demonstrates definitively that the building as it appeared in the 1940s tax photo is the building that was there during the end of the Mature Boom Era that ended in 1930. If it is a close call, Mr. Hutchinson believed the applicant should get the benefit of the fact that the City does not have specific evidence to show that it was the same building. Mr. Hutchinson stated that the Rixie work removed any essential historical form that still existed at the time.

Mr. Hutchinson noted that the Historic Preservation Board focused on the use of the building as a Boarding House. He believed there was nothing in the LMC that tethers that finding to the Statute. The Statute is not about preserving prior uses; but rather preserving the form of old buildings. Mr. Hutchinson thought the HPB had substituted a nostalgia about the Star Hotel. It is interesting history, but it is not the type of preservation that the LMC focuses on. Mr. Hutchinson did not believe the Finding made by the HPB that this building was associated with an era of historic importance was founded on strong evidence. The photos come after the end of the period. Regarding the Finding that this building is associated with the lives of persons of historic importance to Park City, the Appellant did not believe it was this building. Mr. Hutchinson thought the Staff had basically admitted that the Grover cross wing cottage is lost, and the Allende building was destroyed by the Rixie's in the 1970s. Even though the parcel is associated with those colorful historic figures, the building that sits there today is not.

Mr. Hutchinson stated that the Statute refers to noteworthy methods of construction, materials and craftsmanship. The Appellant has taken the position that the haphazardness of this building is not interesting enough to justify a noteworthy designation. It was more like amateur construction. No one acted at the highest levels of their craft, and it was not an exemplar of a particular classic Park City or Western style. Mr. Hutchinson remarked that it was a poorly constructed replica of a style that does not exist anywhere else in Park City. For those reasons, the building should have never been designated as Significant; and it is up to the Board of Adjustment to remove that designation.

Mr. Cusick stated that it was suggested that he should build to the photo that he was showing. He did not know the history of how the City has handled previous issues, but he thought it would be unprecedented to ask someone to find a photo of the original structure and require them to build it in that likeness. He struggles with the concept of how to preserve something that no longer physically exists. Mr. Cusick understood the importance of the history, but he also thinks

authenticity is important. Park City already has enough great authentic history that they should not have to re-create from old photos.

Chair Gezelius noted that the term “replicative architecture” has never been popular in the Historic District of Park City.

Chair Gezelius opened the public hearing.

There were no comments.

Chair Gezelius closed the public hearing.

Director Erickson clarified that the designation of Significance is not tiered only to the era of the Mining Boom. It can be anything older than 50 years old, based on the Significant Site definition in the Code. He remarked that the Significant site makes a distinction between maintaining its historic form and preservation of materials. Also the characteristics following in Item D of the Criteria state either an era of historic importance; or lives of persons who are of historic importance; or noteworthy methods of construction. He emphasized that it was “or” not “and” and only one was needed for a determination of Significance.

Chair Gezelius stated that it was difficult to ascertain what exactly happened to the building over time when there is not photographic or written evidence of everything the Board was being asked to review. She thought they were reaching the point in Park City where buildings that are over 50 years old are not Landmark sites, but they are different enough from the regular community. Some are the A-frame cabins; others are examples of less common architecture that is typically seen around town. She agreed that over time many of these buildings have been remodeled to beyond recognition of what they were initially, as people tried to keep the structure standing. The standards of construction were marginal at best, and the inspections were marginal. Regardless of what happened in the past, what they have now is what stands before them and what is in their neighborhood or in the Historic District. She believed those eclectic buildings of differing sizes and types contribute to the character of the Historic District. Relying upon word of mouth or interpretation of the past, it is difficult to make these decisions, and it is challenging for the City and for anyone who buys one of these structures in terms of what should be done with it. Ms. Gezelius thought the goal should be to preserve as much of the past as possible with reasonable accommodation of how it could be used today.

Ms. Gezelius pointed out that the building at 227 Main Street is not a contributing neighbor in its current empty state. The goal would be to have it rehabilitated or demolished and rebuilt so it becomes a contributing member of the Main Street historic buildings. Ms. Gezelius expressed appreciation to the applicant for the tremendous amount of historical work that he put together. She also thanked the

Staff for preparing a report that gives as much information as possible on this site.

Director Erickson requested that the Board focus their discussion on Section 15-11- 9(a), The Criteria for Designation of a Significant Site. He recalled that the HPB had a substantial discussion on the form, particularly the parapet roof, and the height, mass and scale on the streetscape.

Board Member Wintzer stated that she moved to Park City in 1971 and every day she walked to work past this building. She walked past the construction but she did not pay close attention. However, even if Mr. Rixie created this whole façade, this building and its Spanish revival has not changed since 1971. Ms. Wintzer thought this was a unique building on Main Street because there is nothing else like it and it has always stood out. As she read the Staff report and thought about it, in her opinion, the character, mass and scale has remained the same since she moved here in 1971, even with the changes. She thought it was because the Rixie's kept the similar Spanish style theme. She believed the building has maintained the mass and scale of the original historic period.

Board Member Wintzer stated that this building was designated Significant in 2009, and she thought they should pay attention to the fact that when Mr. Cusick purchased the building the designation was already there. She did not believe now was the time to argue whether the designation was right or wrong.

Chair Gezelius summarized that Ms. Wintzer sees the building as Significant and believes that it retains its historic form. She understood that Ms. Wintzer would uphold the HPB's determination. Ms. Wintzer replied that she would uphold the determination at this point because the ruling was made in 2009.

Board Member Fuegi stated that he had not noticed the link to the HPB Minutes in the Staff report, but he was interested in seeing what the HPB had looked at in making their determination. Mr. Fuegi asked about communication between the Staff and all the things that Mr. Cusick had shown to prove that it should not be Significant. He asked if the Staff had been able to visit the building to see for themselves the new materials that Mr. Cusick claimed he had found.

Mr. Cusick stated that he shared all his information with the Staff, and the Staff has visited the building at least twice. Almost a year ago, Director Erickson suggested that they find out what was behind the façade because Planner Grahn thought the old arches and windows might be behind the existing arches and windows. He pulled an internal demolition permit to look behind the façade. He also put 26 holes inside the building in strategic locations to find the old arches and windows, but he found nothing. He had the Staff come in to see what he had found.

Mr. Fuegi asked Director Erickson to summarize the focus of the HPB discussion. Director Erickson stated that in the conversations between the Staff and the applicant there has been a lot of focus on the distinction between form, character and materials. They understand that materials shift, but the form and character representative of the period that the building functioned as a boarding house, which is more than 50 years old, was part of the reason that the applicant decided to appeal the determination of Significance and the HPBs action. Director Erickson recalled that the HPB focused on the form of the building, which is the front façade, the parapet, the sloping roof into the parapet, and not behind the chimney. Those were the building characteristics that defined the age 1930 through 1977 boarding house activities. That was the core of the discussion and how the discussion shifted from materials. Director Erickson agreed that it is sometimes questionable whether the materials were recycled, whether they were in the same location, or whether they were reused. The fact is that the Rixie's took the original façade and either removed and replaced it or completely redid it, the porch was closed in in the same architectural style, and the original parapet was covered in. Planner Grahn stated that based on the Staff analysis, they do not believe that the parapet on top was actually touched, which is why the curved eave feature remains. The Staff agreed with Mr. Cusick about the windows changing and a few other things.

Planner Grahn commented on the boarding house use and thought it was good to remember that an architecture form tends to follow function. When they talk about the boarding house they are referring to the form because the use dictated the form that it took.

Board Member Robinson stated that in looking at Section 15-11-10(a), he agreed that the structure is 50 years or older. He referred to a photograph on Page 41 of the Staff report which showed a Pop Jenks Collection photograph, circa 1930s, which would include 1939. He did not believe the building suddenly appeared in 1939, but thought it was arguable that the building did not exist in 1929 or 1930. He believed the building was 50 years old. Mr. Robinson did not believe it was the Board's position to argue with the fact that it was designated as a Significant historical site in 2009 for whatever reasons, right or wrong. Mr. Robinson was bothered by the statement made by Mr. Cusick that the building has been demolished and reconstructed on two occasions. He thought that was an overstatement in terms of the building being completely demolished. He thought it was obvious the façade has been changed and covered and possibly reconstructed. Regarding Item c, Mr. Robinson agreed that the building maintains its form and function. He also believed it met the criteria in Item d, based on the fact that significant Park City citizens are associated with the building.

MOTION: Board Member Wintzer moved to DENY the Appeal for the Star Hotel, 227 Main Street, and Uphold the Determination of the HPB, subject to the

Findings of Fact, Conclusions of Law, and the Order. Board Member Robinson seconded the motion.

VOTE: The motion passed unanimously.

Findings of Fact – 227 Main Street

1. The Park City Historic Sites Inventory (HSI), adopted February 4, 2009, includes 414 sites of which 192 sites meet the criteria for designation as Landmark Sites and 222 sites meet the criteria for designation as Significant Sites.
2. The property at 227 Main Street is located in the Historic Commercial Business (HCB) District.
3. The boarding house at 227 Main Street was listed as —Significant on the Park City Historic Sites Inventory in 2009.
4. In December 2015, City Council amended the Land Management Code to expand the criteria for what structures qualify to be landmark and significant sites.
5. In 1871, the Townsite Company secured title to four quarter sections, the area that was to become Park City. John and Sarah Huy (sometimes Huey) had built a house on this property, but the title to the land was not legally transferred to Sarah Huy until 1916.
6. Sarah Huy sold the house to D.L.H.D —Joell Grover in 1920, a prominent Chinese businessman who owned over 60 rental properties in Park City. It is not believed that Grover ever resided at the property, but probably used it as a rental property.
7. Joe Grover did not sell the property to the Allende family until 1937; however, the Allendes had constructed the boarding house by 1929 and census records showed that they had eleven boarders by 1930.
8. The Sanborn Fire Insurance maps of 1889, 1907, 1929, and 1941 substantiate that the boarding house was built prior to 1929.
9. At least three (3) alterations occurred on this site following construction of the original cross wing cottage. A Spanish Revival-style three-story addition was constructed to the east (Main Street) façade of the cross wing c.1920. The Rixie family converted the main and upper level stories of the front porch element into an enclosed porch in 1976 and constructed a fourth story addition at the rear of the cross wing cottage in 1976-1977.
10. The Spanish Revival style elements evident in the construction of the c.1920 addition include the rectangular plan, low-pitched hip roof, white stucco walls and the arcade on the second level above Main Street.
11. The original cross wing cottage was constructed c.1889 and the Spanish-revival addition was constructed to the east façade of the cross wing cottage c.1920. Portions of this building are between 96 and 127 years old.
12. The historic building at this site contributes the Settlement and Mining Boom Era (1894-1930) and largely retains its Essential Historical Form.

13. The Spanish Revival-style addition to create boarding house was built during an era of Historic Importance to the community, the Mature Mining Boom Era (1894- 1930). It is associated with the lives of persons of Historic importance to the community, Joe Grover and Frank Allende. Moreover, the haphazard construction of the Spanish Revival-style addition to a cross wing cottage in order to meet changing demands, the sites use as a boarding house, and the Spanish Revival style are all noteworthy methods of construction, materials, and craftsmanship.

14. The original basement/garage area was covered with stucco by the Rixies during the 1976 remodel; however, the stucco could be removed to expose the original stone foundation.

15. The original metal railing for the Star Hotel entrance is still present in the structure of the new solid stucco railing.

16. Due to the location of the now internal walls of the existing enclosed porch, staff has concluded that this is the historic exterior wall plane of the Star Hotel prior to the enclosure of the porch. The original entrance opening now includes a non-historic entrance door with sidelights and the window openings have been converted into archways; however, staff has concluded that the historic exterior wall plane of the Star Hotel still exists. Staff found physical evidence on the Third Level Enclosed Porch of the existence of two (2) historic porch posts.

17. The original roof form has remained largely unchanged. The ca. 1889 crosswing cottage roof form is still visible as are the hipped roof form of the main structure and the flat roof form formed above the porch projection.

18. There is physical evidence of the historic internal structure of the flat roof form above the porch and the hipped-roof form in the attic, the cornice structure and historic stucco on the interior of the Third Level Enclosed Porch.

19. The north and south elevations remain largely unchanged due to the existence of the historic window openings, historic windows, unadorned eave structure of the ca. 1889 cross-wing cottage, ornamental arched eave of the Star Hotel addition, and presence of historic materials. The historic chimney is located on the south elevation.

20. The rear (west) elevation still retains the northern and southern gabled-ends of the ca. 1889 cross wing cottage which were cut in half (vertically) to accommodate the 1976-1977 Rixie addition, historic wood and stucco siding, and historic trim. The addition could be removed to restore the gabled-ends.

21. The c.1889 double-hung two-over-two windows of the original cross wing cottage are still visible from the north and south elevations.

22. Beyond the front wall of the original cross wing cottage, the windows on the side elevations change to more rectangular, horizontal-oriented openings which reflect the era of the Spanish-revival style addition that was built to the front (east) of the cross wing cottage c.1920.

23. On the rear (west) elevation, there are ghost lines of original window openings on the two gable ends of the cross wing, beneath the c.1976 fourth-story addition constructed by the Rixies.

24. Staff finds that there is a substantial amount of historic materials and form still extant on the building which include, but are not limited to the following list

organized by elevation: the East Elevation contains portions of the basement level stone foundation, historic exterior wall plane of the now enclosed porch, two (2) porch posts on the third level, door and window openings, ornamental eave structure, etc. The South Elevation contains the ornamental eave structure, chimney, windows, etc. The North Elevation contains the ornamental eave structure, windows, etc. The West Elevation contains portions of the historic gabled ends (ca. 1889), etc. Additional materials present on all elevations include roof form and cornice, historic wood siding and trim materials, portions of the historic stucco, etc.

25. A second National Register reconnaissance-level inventory survey was conducted by Allen Roberts in 1995 and found that the building at 227 Main Street should be evaluated as C or B. C represented buildings over 50 years old that had been altered and were not eligible for the National Register of Historic Places. B represented buildings that were potentially eligible but slightly less significant and/or intact.

26. A National Register architectural survey of Park City's historic resources was completed in April 1982 and found the building to be non-contributory. Staff finds that this designation was due to the changes in the façade and also because the Spanish Rcross wing cottage revival style contrasts with the folk Victorian style and western mining town feel of Park City's Main Street.

27. In 2007, the Historic Preservation Board passed Resolution 07-01 which established a Historic Building Inventory. 227 Main Street was identified as historic on this inventory.

28. On January 22, 2009, City Council passed Ordinance 09-05 amending the LMC criteria for designating sites to the HSI.

29. On February 4, 2009, the HPB approved Resolution 09-01 adopting the Historic Sites Inventory. 227 Main Street was designated as a Significant site as part of this inventory.

30. No Historic District Grant has ever been awarded to this property.

31. The boarding house at 227 Main Street does not meet the standards for —Landmarkll designation due to the material changes and alterations to the façade in 1976 that have detracted from the building's historic integrity and made it ineligible for the National Register of Historic Places.

32. On September 29, 2016, the Planning Department received an application for a Determination of Significance; it was deemed complete on October 6, 2016.

Conclusions of Law – 227 Main Street

1. The structure located at 227 Main Street does not meet all of the criteria for designating sites to the Park City Historic Sites Inventory as a Landmark Site including:

a. It is at least fifty (50) years old or has achieved Significance or if the Site is of exceptional importance to the community; and Complies.

b. It retains its Historic Integrity in terms of location, design, setting, materials, workmanship, feeling and association as defined by the National Park Service for the National Register of Historic Places; and

Does Not Comply.

- c. It is significant in local, regional or national history, architecture, engineering or culture associated with at least one (1) of the following:
 - i. An era that has made a significant contribution to the broad patterns of our history;
 - ii. The lives of Persons significant in the history of the community, state, region, or nation; or
 - iii. The distinctive characteristics of type, period, or method of construction or the work of a notable architect or master craftsman.

Complies.

2. The structure located at 227 Main Street does meet all of the criteria for a Significant Site as set forth in LMC Section 15-11-10(A)(2) which includes:

- a. It is at least fifty (50) years old or the Site is of exceptional importance to the community; and Complies.
- b. It retains its Historical Form as may be demonstrated but not limited by any of the following:
 - i. It previously received a historic grant from the City; or
 - ii. It was previously listed on the Historic Sites Inventory; or
 - iii. It was listed as Significant or on any reconnaissance or intensive level survey of historic resources; or Complies.
- c. It has one (1) or more of the following:
 - i. It retains its historic scale, context, materials in a manner and degree which can be restored to Historical Form even if it has non-historic additions; and
 - ii. It reflects the Historical or Architectural character of the site or district through design characteristics such as mass, scale, composition, materials, treatment, cornice, and/or other architectural features as are Visually Compatible to the Mining Era Residences National Register District even if it has non-historic additions; or Complies.
 - iii. It is important in local or regional history architecture, engineering, or culture associated with at least one (1) of the following:
 - (i) An era of Historic Importance to the community, or
 - (ii) Lives of Persons who were of Historic importance to the community, or
 - iv. Noteworthy methods of construction, materials, or craftsmanship used during the Historic period. Complies.

Order

1. The appeal of the Historic Preservation Board's determination of significance for the building at 227 Main Street is denied. The boarding house located at 227 Main Street is a Significant site on the Historic Sites Inventory.

2. 252 Woodside Avenue – Variance request for an increase in the exterior height for a majority of the upper level, and for additional height for the interior of the house. (Application PL-16-03388)

Planner Makena Hawley reviewed the variance request for 352 Woodside Avenue, which is currently a vacant lot in the HR-1 zone. The owner has found difficulties in meeting the height restrictions with the design proposal and was requesting a variance application to gain an increase to the exterior height and the interior height.

Planner Hawley explained that the LMC has several building height regulations. One being reviewed this evening was the exterior height, which is 27' from existing grade to the top of the structure. The second was the interior height of 35' from the lowest finished floor plane to the highest wall top plate.

Planner Hawley stated that the applicant believes their lot contains different circumstances because it is one of the last lots to be developed on Woodside, and it has had significant runoffs because it was used for snow storage which led to an increase in erosion.

Planner Hawley remarked that the LMC allows for a variance to be granted based on finding that the property has special circumstances that do not exist elsewhere in the neighborhood. The Staff finds that regarding this application, the circumstances connected to the lot are not necessarily unique to the neighborhood or to the zone, and that the same circumstances could be found elsewhere. The Staff finds that the slope does not cause unreasonable hardship that differs from the other lots. The Staff also finds that granting the height variance could create impacts on adjacent lots below, and set a low precedence for others to take advantage of.

Planner Hawley stated that since the applicant has the burden of providing proof that all the conditions to justify a variance have been met, Jacob and John Shirley, the project architects, had prepared a presentation on behalf of the applicant.

John Shirley with Think Architecture assumed the Board members were familiar with the lot. He presented an exhibit showing the surrounding homes. Mr. Shirley appreciated Planner Hawley's thoroughness in working with them throughout this process. Mr. Shirley stated that they spent considerable time going through the design guidelines for the Historic District, and they understood the importance of creating something architecturally that fits into the fabric of the neighborhood and benefits his client as well as the neighborhood as a whole.

Mr. Shirley noted that he has done numerous projects in Park City and a lot of hillside development. He was not suggesting that other homes have not been built on steep lots with the Design Guidelines, but this lot is nuanced. He stated

that the street slope and the street frontage on Woodside, slopes over 4' from the south to the north end of the lot. Looking at the slope going down the hill, it is a compound slope, which means it slopes from corner to corner rather than side to side. Mr. Shirley stated that as an architect, the first thing to do is solve the car situation and determine where to put the garage. He remarked that in working with the height restrictions, the garage is placed on the low side of the lot. He presented a site plan showing how the home fits within the setbacks.

Planner Hawley explained that at first the Staff thought they needed to address a setback issue because the lot has a width of 50.13'. However, there was a discrepancy when the LMC was put on line, and the table showing setbacks showed an incorrect number for the setback requirements. For that reason, Planner Hawley initially thought the applicant needed to request a variance for the setback as well. Planner Whetstone found the mistake when she reviewed the report. The internet version was corrected and the discrepancies were changed, and this lot was found to be in compliance on the setback issue.

Mr. Shirley presented an exhibit and explained how they determine the base elevation for the start of the home. He understood that the Code would allow up to a 14% slope, but he believed 12% was excessive, particularly in a good snow year. Once they take the slope and go to the setback past the snow storage setback, they are at 7102.6'. The garage exceeds the 27' height limit regardless of whether it has a flat roof or the proposed 7/12 pitch, which is the minimum slope allowed by the Design Guidelines. Mr. Shirley pointed out that this was the first problem they encountered with the 27' height limit.

Mr. Shirley stated that as they put the building down and try to reach grade, they also have the requirement to fit within the 35' internal height limit, which is from the basement floor to the top plate of the structure. He presented an illustration showing that from the garage down the structure, in order to meet grade down below at 27', would also have 3 to 4 feet of fill underneath it before it reaches the grade below. Mr. Shirley stated that taking the structure down to the existing grade and leaving the garage where it has to be because it is limited by the slope of the driveway, there is a gap between the 35' internal height limit and the 27' from existing grade external limit. The issue they were dealing with is the internal versus the external.

Mr. Shirley presented a section of the actual building they were proposing. He noted that they tried to create a happy medium where they take the building down to existing grade below, the garage is fixed because of the driveway, and the 35' internal height bust occurs just under the garage. The main house fits within the 35' height limit. In order to get to the garage and the driveway, there is a 4' crawl space underneath the garage.

Mr. Shirley commented on the experience at the street level. He noted that the applicant, Tomilee Gill, owns the home to the south, and the surveyor shot the

ridge heights the existing height was 7127. The home to the north has a tower element that is at 2118.6. Drawing a line, the average height between the two, the very north end of the garage barely extends through that.

Mr. Shirley stated that because the applicant has two lots that were combined, they are showing a two car garage side by side. He understood that it was discouraged in the Design Guidelines in favor of a height exception that is allowed for a tandem garage. He believed the wording in the Guidelines was misleading because it says if you have a one car garage in a tandem configuration, you are allowed an exception of 35' from existing grade rather than from the basement. Mr. Shirley pointed out that a one-car garage in a tandem configuration is actually a two-car garage in a tandem configuration. He showed how going to a tandem garage actually creates a bigger bust in the height and effects the appearance of the house more than a side by side.

Mr. Shirley stated that another circumstance of importance is the need in this home for ADA requirements. There is an elevator in the home and they need the ability to have somebody come into the garage in the winter time and have handicap accessibility. Going to a wider single car garage, which would be 15' wide instead of 20' wide, would technically accommodate a wheelchair. With the two car garage, one stall would have to be vacant to so the wheelchair could go out and then into the entryway to access the elevator. Mr. Shirley stated that the portion of the home with the elevator does not exceed the height limit because it has the exception for an elevator. The only issue is the garage itself. Mr. Shirley reiterated that it was important to have the side by side configuration versus the tandem. He reviewed two configurations. He believed that anybody looking at the difference between the two configurations would realize that what they were proposing has less impact than the tandem garage configuration with the exception allowed in the Guidelines.

Mr. Shirley presented a fog study and stated that the fact that the lot is sloping from corner to corner is important. On the first image the roofline fit within the 27' height limit. However, because it slopes in two directions, the roof starts to exceed the height limit on the north side. Mr. Shirley remarked that the perceived bust in the height was on the north side rather than the entire roof.

Mr. Shirley believed the proposed design fits in the neighborhood and makes sense in terms of matching the fabric of the neighborhood, versus something more contemporary with a flat roof that would look out of place. He pointed out that even with a flat roof they would still have to seek a height variance. Mr. Shirley presented renderings showing views from both side of the front of the house, how the two-car garage was broken up to look like two single car garages, and the entrance way. The rest of the house terraces down the hill. Mr. Shirley stated that by pushing the house to the north side results in more usable yard space on the south side of the home. It allows for permanent stairs

that will terrace down to the usable exterior spaces of a lower patio and a side patio off the dining area.

Chair Gezelius asked if the elevator extends to the lower level. Mr. Shirley replied that the elevator extends to all levels. He stated that it is difficult on a steep slope to meet the heights and to provide accessibility, and at the same time create a scenario where there is no need for on-street parking. He believed the proposed scenario meets the parking need because there would be a guest parking stall and the two required stalls. He thought the appearance of the house from the street looks smaller than most of the adjoining homes on the street in an effort to keep that character.

Chair Gezelius asked if they were proposing to heat the driveway. Mr. Shirley answered yes. It would be necessary because of the 12% grade. Chair Gezelius commented on the dual slope on this lot and the drainage from Treasure Mountain, and asked how they would handle the sump pump or drainage issues on this steep site. Mr. Shirley was not familiar with Treasure Mountain issue per se, but to address the issue specific to this lot, there is no grading design on the sides of the homes in the neighborhood. By getting the sidewalks, they will be able to control the water going down, and utilize it into a sump pump at the bottom to control where it goes. On-site water is not required to be pumped back to the storm sewer. Mr. Shirley pointed out that they had not yet had this specific discussion with the City. However, the applicant had spoken with the neighbors in the back and asked if they had any water issues.

The applicant, Tomilee Gill stated that both neighbors said they had not had any issues with water, which she found surprising.

Mr. Shirley stated that the amount of snow that is currently stored on the site has to go somewhere when it melts. He assumed it would go into the back of the neighbors, but no one has complained.

Chair Gezelius wanted to make sure that the applicant intended to address the drainage issue on that site.

Board Member Wintzer asked if the design of the house and the location of the master bedroom was the reason for having the garage on the north side. Mr. Shirley stated that putting the garage on the north side was driven by the slope. It is the lowest side and he was trying to make the driveway as flat as possible. On the north side he was able to get the garage as low as possible on the site. Going to the south side would actually raise the garage higher, which would exacerbate the problem because it would be farther to reach the house level. Mr. Shirley explained why putting the garage on the south side reduces the opportunity to get daylight between the homes and utilize exterior space for outside living purposes.

Board Member Wintzer believed that if the house were smaller it would solve many of the problems. She thought they were trying to put too much on to this lot given the topography. In her opinion, they were trying to put a Thaynes Canyon house on an Old Town double lot. Mr. Shirley stated that the table in the Design Guidelines which allows for the setbacks also gives the maximum building pad size. He pointed out that they complied with the allowable building area on the lot given the standards for this neighborhood.

Chair Gezelius pointed out that they may have complied with the size, but they needed an exception on the height in order to achieve that size. Mr. Shirley agreed.

Board Member Fuegi understood that Mr. Shirley was claiming that the erosion affected the steepness of the site. He asked if Mr. Shirley thought the erosion affected the land or whether enough topsoil was washed away and that created the steepness. Mr. Shirley believed erosion was a separate issue and it did not pertain to the height and the design of the house. There has been a lot of erosion on the site because it was not built on, and because it was the last vacant lot to store snow, it gets more than its fair share of snow storage. Mr. Shirley clarified that he did not believe the erosion created the steepness.

Board Member Fuegi referred to Mr. Shirley's comments about a flat roof versus the proposed roof design, and that a flat roof would not fit in the neighborhood. He asked if a flat roof was permitted in the zone. Planner Hawley replied that flat roofs are allowed based on certain Design Guidelines and LMC regulations. If the majority of the roof is flat, it is required to be a green roof.

Director Erickson understood that the variance request related to the amount of out-of-compliance portion of the roof. The ADA criteria affects the height of the roof, but only in a certain proportion, and the ADA criteria is not specific only to this lot. A secondary concern as they go through a Steep Slope CUP in the future, is that if this applicant sells the lot, the house is entitled to extra height not requiring the ADA access. Director Erickson clarified that the discussion for the variance was about the amount of the roof necessary to meet the ADA guidelines, and whether ADA compliance constitutes a variance in this location.

Board Member Fuegi noted that the Staff report states that if the variance is not granted, the applicant would be required to obtain the Planning Director's approval for elevator access. He asked if that was tied to the ADA compliance. Planner Hawley explained that Planning Director approval is required for the height exceptions allowed for the interior and exterior height for a garage on a downhill lot, which includes circulation and an elevator. The garage on the downhill lot exception grants the tandem car configuration garage, circulation, and the front entry way. The applicant would be able to apply for both exceptions. Mr. Fuegi stated that if the variance was granted based on ADA compliance, could the owner of the lot sell it with the same variance. Director Erickson

answered yes, because the variance runs with the land. Mr. Fuegi understood that regardless of whether the BOA or the Planning Director grants the variance, it would not affect selling the lot.

Mr. Shirley pointed out that the home to the north went through a steep slope CUP analysis in 2000, and it was also granted a height exception for the tower element. He noted that the guidelines have become more restrictive since that exception was granted.

Board Member Robinson noted that Conclusion of Law #7 in the Staff report stated that the variance for additional height would not substantially affect the General Plan, but will be contrary to the public interest. Planner Hawley explained that the Staff did not find that the General Plan would be substantially affected by the design and the addition of height. However, the Staff found that the lower neighbors or neighbors nearby could possibly be impacted by the requested height variance. In addition, if the height variance is allowed, they could potentially be setting a precedence for other neighbors to claim they have a similar situation and request a height variance. It is a matter of setting precedence, as well as impacting the neighbors who expect a certain height based on the LMC.

Board Member Robinson asked Mr. Shirley to show the configurations of the downhill house and the uphill house and the heights. In looking at the configuration, he believed only a tip of the garage would be above 27'. Mr. Shirley replied that he was incorrect. If they average the height between the two existing buildings, it was approximately 1-1/2 to 2 feet. He noted that the requirement for the 7/12 pitch was also driving the height. In terms of setting a precedence, Mr. Shirley remarked that there were two vacant lots left on the street and he did not believe that would be an issue. He pointed out that many of the homes in the neighborhood were built prior to the 27' height limit. Mr. Shirley clarified that this applicant was requesting a variance because they believe their design works with the intent of the Design Guidelines. He did not believe a flat roof would work as well in the neighborhood, and they would still need a variance for one portion of the roof. Mr. Shirley thought the proposed design made more sense for the neighborhood.

Chair Gezelius opened the public hearing.

Ruth Meintsma, a resident at 305 Woodside, believed that neither of the two requested variances were necessary to accomplish the beautiful home they want. Ms. Meintsma addressed Criteria 2 regarding special circumstances. She noted that the applicant believes they have a unique case with this lot due to the snow storage and the erosion steepening the lot. Ms. Meintsma provided photos showing how the lot is heavily vegetated in the summer. The vegetation holds the dirt. Another photo showed a City easement where vehicles park temporarily for delivery or construction. That same parking area has been there for the last

30 years and has never moved. Ms. Meintsma commented on the discussion about no water problems with the residents below. She did not believe erosion was an issue unique to this lot. She referred to the applicants comments about the compound slope of this lot. She did not believe there was a steep slope in Park City that was not compound, especially on Woodside, and that is evidenced by the downhill slope of Woodside and the downhill slope of the Third and Fourth Street stairs. Ms. Meintsma pointed out that the whole area was a compound slope. In her opinion, those two circumstances did not make this lot unique to build on.

Ms. Meintsma presented an illustration which addressed the applicant's argument that meeting the height requirements would not allow for the construction of a garage. She remarked that the requirements that would not allow the construction of the garage was the 35' measured from the lowest finished floor to the highest plane. In addition, the applicant claims that the height restriction would not allow the ADA accessibility. Ms. Meintsma stated that she is a strong proponent of ADA accessibility. People with ADA issues can ski all day on the mountain but find it difficult to live in Old Town. She believed as many houses as possible should try to allow for ADA. Ms. Meintsma reviewed her illustration. Using Mr. Shirley's design, she did what the City wants people to do when building, which is compact the same design into a lot that works within the neighborhood. Ms. Meintsma explained her illustration and showed how she made the same design work on the lot without any exceptions. She understood that people like higher ceilings because it has a more luxurious feel, but high ceilings are not required to make a house livable. Eight feet is a standard height, and she made all three floors eight feet high. Ms. Meintsma stated that a second compromise was to lose the 35 square feet kickout on the master bedroom level. Another loss is that due to the slope, the front roof of the master bedroom would drop down to 7' on the downhill side. Ms. Meintsma referred to the garage, and stated that in order for the structure to comply with the 27' height from grade envelope, but also the 35' from lower floor to top plate, would make the roof of the garage have to meet the top plate at 7'. That would not allow for a garage door that is 8' high, but she believed that could be addressed through the HDDR. She had created a design that she thought improved the ADA accessibility with a single garage that is ADA wide. The design would allow for a gable that would allow for an 8' or 9' garage.

Ms. Meintsma outlined the advantage to the compact design. One is that the garage floor is raised five inches which reduces the driveway slope. Another advantage is that the 4' of dead space under the garage on the master level becomes 400 square feet additional living space. Ms. Meintsma pointed out that the more compact design creates more square footage in the home. She believed the Codes really work if someone is creative with their design. Ms. Meintsma stated that this home could be built with all the same number of rooms proposed and achieve 400 additional square feet, minus the 35 square foot

kickout, in a more compact design that fits within almost all of the height envelopes and criteria.

Ms. Meintsma noted that the applicant was asking for a variance and a 35' from grade exception, but she did not believe it was necessary. However, there was a second 35' criteria that was completely different from the first 35' criteria. She indicated the red line at the top which indicated the 35' exception for a tandem garage. Ms. Meintsma referred to the parking configuration on page 82 of the Staff report and noted that the ADA access in that location does not allow autonomy to the ADA needs person. When the person in the vehicle who needs ADA access pulls into the garage, the other side of the garage either has to be empty, or a second driver must be available to move the car out of the way so the person needing ADA accessibility can get into the house. Ms. Meintsma had created a design that she would wait to introduce during the HDDR process because the type of garage was not an issue for the requested variances. Ms. Meintsma stated that the applicant was asking for the 35' from grade exception for a side by side garage. However, per the Code, that variance is only granted for a single car garage.

Ms. Meintsma remarked that neither of the two variances requested are necessary to create not only the same structure, but also to create additional square footage. She stated that the variance that was not applied for was in 15-2.2-5D, which is the building height exception with the garage on the downhill lot, and it applies to a single-wide garage with tandem parking. That would be a variance, not an exception. She believed that the exception in 15-2.5 and 15-2.25A were not necessary to create a good project on this lot. Ms. Meintsma pointed out that 15-2.25D had not been applied for. She also thought the double car issue of compliance in Old Town might have to be considered before the City could consider the variance.

Chair Gezelius closed the public hearing.

Chair Gezelius had difficulty with the issue of the height. She was not a proponent when the height limit was changed to 27', but it is the rule. Many properties in Old Town benefited from the higher height limit; but for the past seven or eight years people have had to comply with the new rule. Chair Gezelius believed it would be precedent setting if they allowed this request. The rule should be enforced with minimal exceptions, or the rule should be changed. Chair Gezelius commented on the number of people in Old Town who wanted a two-car garage. She understood the desire to have a two-car garage, but at the same time, granting this request would be unfair to the people who were told they could not have a two-car garage because of the garage barrage. Chair Gezelius agreed that making a home ADA accessible for safety would require a garage for safety because of the streets being so icy in Old Town. She agreed with the point Ms. Meintsma had made about the height of the interior rooms. Chair Gezelius remarked that everything does not fit in Old Town. There are other

suitable areas in town for building larger homes or homes that are easier to access that do not require exceptions. Chair Gezelius clarified that her comments were not a criticism of the design, but she could not justify giving this house a height exception in order to get a larger home or more parking places when they have been so restrictive to other property owners wishing to develop on vacant lots in Old Town.

Board Member Robinson appreciated the ideas for additional design, he thought it was beyond the purview of the Board of Adjustment to discuss or suggest alternative designs. The Board needed to look at the five criteria they were given, and if all five are not met, the BOA should not grant a variance. Mr. Robinson believed that in a number of cases the criteria were not met. He did not believe that adhering to the height restriction would create unreasonable hardship, because there are other design alternatives. Mr. Robinson did not think there were special circumstances to the property in comparison to the rest of the properties in the area. He was not in favor of granting the variance for the height exceptions.

Board Member Wintzer agreed with the comments made by Mr. Robinson and Ms. Gezelius. It does not meet the five criteria, and it falls out of line with other decisions the Board has made. It is important for the Board to be consistent and fair to all applicants.

Board Member Fuegi concurred that the five criteria had not been met, and that was the basis for the Board to make their decision. He was also concerned about setting a precedent. Mr. Fuegi agreed that the Board has turned down similar requests in the past and they need to be consistent. He liked the design but he did not believe the Code would allow it.

MOTION: Commissioner Wintzer moved to Deny the request for the two variances for height for 352 Woodside Avenue, according to the Finding of Fact, Conclusions of Law and the Order. Board Member Fuegi seconded the motion.

VOTE: The motion passed unanimously.

Findings of Fact – 352 Woodside Avenue

1. On December 6, 2016, the Planning Department received an application for a variance request to the HR-1 height requirements and side yard setbacks.
2. The application was deemed complete on December 21, 2016.
3. The property is located at 352 Woodside Avenue.
4. Woodside Avenue has an uphill slope heading from north to south. The lots on the west side of the street having a steep uphill slope and the lots on the east side of the property have a steep downhill slope.
5. Staff found the requested design to be out of compliance on several issues

including the following:, the house design exceeds the exterior height of 27 feet from existing grade as well as exceeding the interior height of 35 feet from the lowest floor plane to highest wall top plate.

6. In addition to the Variance the applicant will need to submit and gain approval of 3 different applications with the Planning Department. The additional applications would include: a historic district design review, a steep slope conditional use permit and a Planning Commission approval for the Garages on Downhill lots height exception. The Planning Commission will review the steep slope conditional use permit and the height exception, the HDDR will be reviewed internally by Staff.

7. Per 15-2.2-5 (D) 4 the LMC allows height exceptions for garages on downhill lots if approved by the Planning Commission.

8. 50.13' x 75 undeveloped lot equaling a square footage of 3759.75 square feet.

9. Based on the size of the lot, the applicant is permitted to construct a maximum footprint of 1521.86 square feet.

10. The applicant is proposing to construct a single family dwelling with access to Woodside Avenue.

11. The applicant reports that due to lack of development on the lot and the continuous erosion due to snow storage taking place there, the lot is unique in its steepness.

12. The applicant expresses concerns about the necessity for height exceptions to meet applicant's desire for ADA accessibility in the home.

13. Because of the significant 53% grade change from Woodside Avenue moving east down the lot the applicant is requesting an exception to LMC 15-2.2-5 and 15--2.2-5 (A) which states that a structure shall have a maximum height of 27 feet measured from existing grade and a maximum height of 35 feet measured from the lowest finish floor plane to the point of the highest wall top plat the supports the ceiling joists or roof rafters.

14. As currently designed, the applicant's proposal requires approximately 33.2 feet above existing grade; this is approx. 6' above the 27 foot maximum.

15. The applicant's interior proposal requires approximately 37.5 feet that requires 2.5 feet above the 35 foot maximum.

16. The applicant's vertical articulation for a 10' minimum horizontal step in the downhill façade does not comply.

17. The applicant bears the burden of proving that all of the conditions justifying a variance have been met ().

18. The slope of the lot is not a unique circumstance and is a condition that is general to the neighborhood on Woodside as well as the HR-1 zone. The steepness of the slope does not cause unreasonable hardship and is not unusual from other lots in the neighborhood. In order to support this request, the Code requires the applicant to show how their lot and comes from circumstances peculiar to the Property, not from conditions that are general to the neighborhood.

19. The essential property right possessed by others in the same zone can be accommodated with a different design proposal that reduces the overall height of the structure. The hardship cited by the applicant could generally apply to many

other properties in the same zone in regards to the height request and therefore special circumstances do not exist.

20. A different design may be proposed that does not request 55% of the building to be above the height restriction and that complies with the exceptions in the LMC for garages on downhill lots.

21. The variance for height will not substantially affect the General Plan but could be contrary to public interest in that granting the height variance would set a precedent for others to take advantage of in order to not adhere to the height regulations of the zone. Granting this height variance could create sizable impacts on the adjacent lot below.

22. The request for a height exception goes beyond observation of the Land Management Code. The LMC provides height exceptions for interior and exterior height in order to create additional opportunities for ADA necessities and steep slopes with garages on downhill lots. This lot does not provide any unique circumstances that lot owners on Woodside did not also experience in similar situations.

23. LMC Section 15-2.2-5 D (3) provides height exceptions for ADA access including interior and exterior height exceptions for elevator, circulation and access. In order for this to be achieved the elevator and floor plans must comply with ADA standards; the proposed plans do not comply with ADA standards.

24. LMC Section 15-2.2-5 D (3) provides height exceptions of garages on downhill lots, but this only accommodates a single car wide garage in a tandem parking configuration. This exception also includes a height exception for circulation and stairs/or an ADA elevator, in addition to a reasonably sized front entry area. The applicant is not proposing two parking spaces in a tandem configuration, but, rather two side-by-side parking spaces.

25. In regards to the height request, a double car garage, office, master bed and master bath do not require a height variance in order for ADA accessibility to be an option.

Conclusion of Law – 352 Woodside Avenue

1. Literal enforcement of the HR-1 District Land Management Code requirements for side yard setbacks for this property causes an unreasonable hardship that is not necessary to carry out the general purpose of the zoning ordinance.

2. Literal enforcement of the HR-1 District Land Management Code requirements for height for this property would not cause an unreasonable hardship that is not necessary to carry out the general purpose of the zoning ordinance.

3. There are special circumstances attached to the property that do not generally apply to other properties in the same district in terms of lot width.

4. There are no special circumstances attached to the property that do not generally apply to other properties in the same district in terms of the steepness of the slope.

5. Granting the variance for a side yard setback reduction is essential to the enjoyment of substantial property right possessed by other property owners in the same district.

6. Granting the variance for additional height is not essential to the enjoyment of substantial property right possessed by other property owners in the same district.
7. The variance for additional height will not substantially affect the General Plan but will be contrary to the public interest.
8. The spirit of the zoning ordinance is not observed by this application for additional height.

Order

1. A variance to LMC Section 15-2.2-5, to the required maximum height of 27' from existing grade to allow a maximum height of 33' above existing grade, is hereby denied.
2. A variance to LMC Section 15-2.2-5 (A), to the required maximum height of 35' to allow a maximum height of 37.5' measured from the lowest finish floor plane to the point of the highest wall top plate that supports the ceiling joists or roof rafters, is hereby denied.

Director Erickson reported that two variances were coming to the Board of Adjustment in March. The Board discussed potential meeting dates and tentatively scheduled March 21st.

Chair Gezelius adjourned the meeting at 7:23 p.m.

Approved by _____
Ruth Gezelius, Chair
Board of Adjustment



Memo to the Board of Adjustment

Application #: PL-16-03418
Subject: 339 Park Avenue
Author: Anya Grahn, Historic Preservation Planner
Date: March 21, 2017
Type of Item: Variance Request

The owner of the historic house at 339 Park Avenue requested a variance on December 29, 2016; it was deemed complete January 31, 2017. During staff's review of the variance, we discovered several issues that needed to be resolved before moving forward with the improvements that required a variance. The applicant withdrew his variance request on March 13, 2017.



Board of Adjustment Staff Report

Application #: PL-16-03358
Subject: 277 McHenry Avenue
Author: Makena Hawley, City Planner
Date: March 21, 2017
Type of Item: Variances

PLANNING DEPARTMENT

Summary Recommendations

Staff recommends that the Board of Adjustment review, conduct a public hearing, and grant the request for two (2) variances out of the three (3) variances requested: (1) Land Management Code Section 15-2.1-3 (E) Rear Yard Setbacks and 2) Land Management Code Section 15-4-7(A), Accessory Apartment Size based on the Floor Area of the main dwelling, based on the findings of fact, conclusions of law, and conditions of approval as outlined in this report.

Description

Applicant: Michael Kaplan, represented by David White, Architect
Zoning: Historic Residential - Low Density (HRL) District
Adjacent Land Uses: Residential single family homes
Reason for Review: Variances require Board of Adjustment approval

Proposal

The applicant is proposing to construct an Accessory Apartment with a two-car garage that will be situated on the opposite side of McHenry Avenue from the existing Duplex dwelling on the same lot. Due to McHenry Avenue bisecting the lot, the lot area for an Accessory Apartment is reduced. The applicant is requesting three variances:

- 1) A variance to reduce the rear yard setback requirement (LMC Section 15-2.1-3 (E) – Rear Yard Setback in the HRL District) from the required 10' to 5' for construction of a detached garage and accessory apartment on the eastern portion of the Lot.
- 2) A variance to the allowable Floor Area of an Accessory Apartment (LMC Section 15-4-7 (A) 1 - SIZE) that is based on not more than 1/3 the floor area of the main dwelling. Allowable floor area, based on the 2,100 sf main dwelling is 700 sf and applicant requests 1,166.45 sf.
- 3) A variance to the maximum floor area of an Accessory Apartment (LMC Section 15-4-7 (A) 1 – SIZE) of no more than 1,000 sf. The applicant requests a maximum floor area for the Accessory Apartment of 1,166.45 sf.

Purpose

The purpose of the Historic Residential Low-Density (HRL) District is to:

- A. reduce density that is accessible only by substandard Streets so these Streets are not impacted beyond their reasonable carrying capacity,
- B. provide an Area of lower density Residential Use within the old portion of Park City,
- C. preserve the character of Historic residential Development in Park City,
- D. encourage the preservation of Historic Structures,
- E. encourage construction of Historically Compatible Structures that contribute to the character and scale of the Historic District, and maintain existing residential neighborhoods.
- F. establish Development review criteria for new Development on Steep Slopes which mitigate impacts to mass and scale and the environment, and

G. define Development parameters that are consistent with the General Plan policies for the Historic core.

Background

On November 2, 2016, the Planning Department received an application for three variances as described above. The application was deemed complete on December 28, 2016.

The property is located at 277 McHenry Avenue. At this location, McHenry Avenue is a slightly steep street bisecting properties and creating odd shaped lots all the way up the hill. 277 McHenry is made up of Lot 12 and North ½ of Lot 11. An existing non-historic and non-conforming duplex home is built over the lot lines. Paved McHenry Avenue bisects these lots creating a western portion and an eastern portion of the same lots.

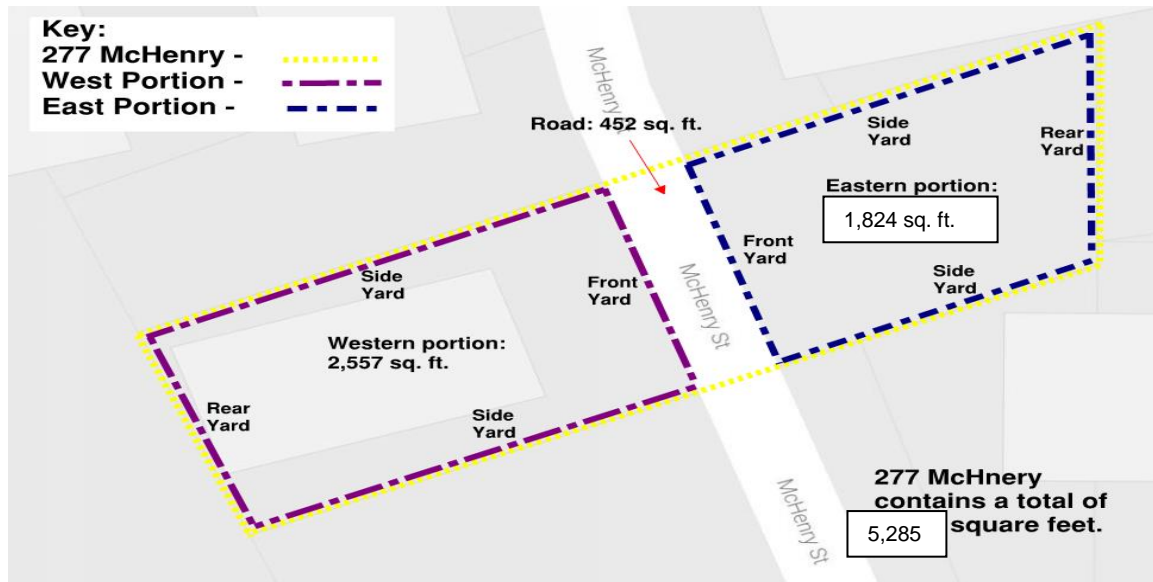
The existing property contains a total of 5,285 square feet.

The western half of 277 McHenry is a total of 2,557 sq. ft.

The eastern portion of 277 McHenry is a total of 1,824 sq. ft.

The road equates to 452 sq. ft.

The existing duplex is 2,100 sq. ft. in floor area, with an existing footprint of 700 sq. ft.



In order for further development on this lot, in addition to the variance approval, the applicant would need to submit and gain approval of 4 different applications: a plat amendment to combine the parcels and dedicate ROW for McHenry Avenue, a historic district design review (HDDR), a conditional use permit (CUP) for an accessory apartment, and a steep slope conditional use permit (CUP). The Planning Commission will review the plat amendment, steep slope CUP and the CUP for the accessory apartment.

Plat Amendment –

277 McHenry is made up of Lot 12 and North ½ of Lot 11 with the existing house built over the lot lines. A plat amendment is required to increase any development since the owner may not build over lot lines. As part of the platting, the road, McHenry Avenue, will be formally dedicated to the City. State code dedicates streets and roads to the use of the public when it has been continuously used as a public thoroughfare for a period of ten (10) years. McHenry has continuously been used as a public thoroughfare for much longer than the required ten

(10) years. The area of road does not get counted for yard or area requirements pursuant to LMC § 15-7.3-4(l)(2) (“Land reserved for any road purposes may not be counted in satisfying yard or Area requirements contained in the Land Management Code”) Because Utah Code § 72-5-104 dictates that statutorily the road is dedicated after ten (10) years, the requirement to dedicate the road as part of the Plat Amendment formalizes that dedication.

SS CUP –

A Steep Slope CUP is required if any new development at 277 McHenry Ave. is proposed on a slope of 30% or greater.

HDDR –

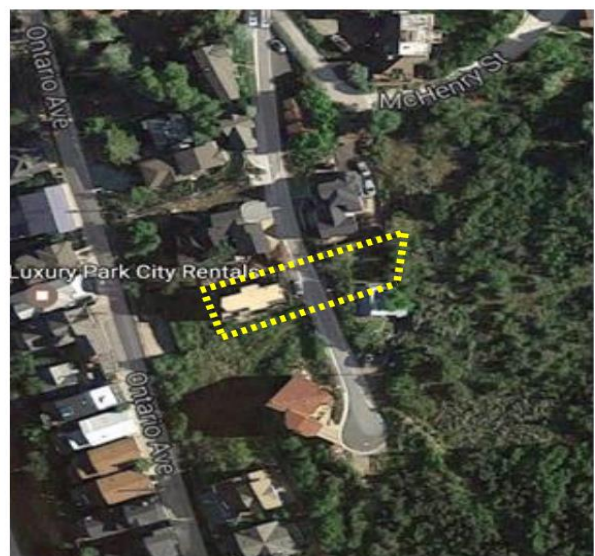
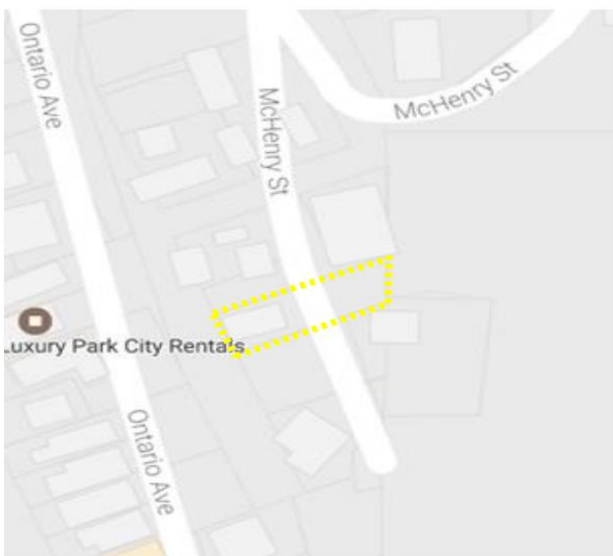
An HDDR will be required if any new development or renovation at 277 McHenry Ave is proposed.

The applicant requests the variances to allow an accessory apartment to be built on the north/east half of the Lots where no development currently exists. The design includes construction of an accessory apartment with a two-car garage at the basement-level with living space and decks above it. No changes are proposed to the existing dwelling.

CUP for Accessory Apartment –

In the HRL zone, an accessory apartment is a Conditional Use. The LMC indicates that: “Accessory Apartments may be no more than one third (1/3) of the dwelling size, shall be limited to a maximum floor Area of 1,000 square feet and shall be no less than 400 square feet with no more than two (2) Bedrooms.”

In addition, one parking space per bedroom must be provided, nightly rentals are not allowed in the Main house or the Accessory Apartment, and in addition to other requirements, either the main Dwelling Unit or the Accessory Apartment shall be occupied by the Owner of the Structure and the Accessory Apartment shall not be sold separately.



Analysis

The property is located within the HR-L District and consists of all of Lot 12, and one half of Lot 11, of Block No. 60 within the Park City Survey. The site is currently occupied by a non-historic duplex which is non-conforming due to the lack of required number of parking spots (4 required, 2 provided). The current footprint on the lot is 700 square feet and based on the size of the lot, the applicant is permitted to construct a maximum footprint of 1,712 square feet. The Duplex was built in 1973 over two property lines.

In addition to the zone requirements, the following are the requirements per Land Management Code Section 15-4-7 for Accessory Apartments:

Requirement	LMC Requirement	Proposed
Size	Accessory Apartments may be no more than one third (1/3) of the dwelling size	Allowed: 700 sq. ft. based on a maximum of 1/3 (33.3%) of the existing dwelling size which is 2,100 sf. Proposing: 1,166.45 sf. of Accessory Apartment floor area which is 55.5% of the existing dwelling size. Requesting 466.45 sf more floor area than allowed by the LMC. Variance request #2.
Size	Shall be limited to a maximum floor Area of 1,000 square feet and shall be no less than 400 square feet	The applicant is proposing a maximum floor area of 1166.45 sf. Which is 166 sf more than permitted by code. Variance request #3.
Size	No more than two (2) Bedrooms	2 bedrooms Complies
	An Accessory Apartment may not increase the floor Area of a Structure over the maximum floor Area as specified in the Land Management Code or Subdivision approval.	NA There is no specified limit on floor area only building footprint in which both building together comply with the LMC for the size of the Lots.
Parking	One (1) Parking Space per Bedroom must be provided in addition to the existing requirement for the primary residence.	2 bedrooms, 2 car garage proposed Complies
Apartments per lot	No more than one (1) Accessory Apartment may be located on a Lot.	Complies
No more than one (1) Accessory Apartment may be located on a Lot.	The Applicant for an Accessory Apartment must submit a floor plan, architectural elevations, and Site plan showing any proposed changes to the Structure or Site.	Complies
Density Limits	A permit for an Accessory Apartment may not be granted if more than three (3) of the homes within three hundred feet (300') of the	Complies There are 0 permitted accessory apartments

	Applicant's Property boundary contain other established Accessory Apartments. There may be no more than four (4) Accessory Apartments within a three hundred foot (300') radius.	within 300'
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Front and rear yard setbacks are determined in the HRL zone by the lot depth. The longer the depth of the lot the greater the setbacks, as shown in Table 15-2.1a:

(E) **FRONT AND REAR YARDS.** Front and Rear Yards are as follows:

TABLE 15-2.1a

Lot Depth	Minimum Front/Rear Setback	Total of Setbacks
Up to 75 ft., inclusive	10 ft.	20 ft.
From 75 ft. to 100 ft.	12 ft.	25 ft.
Over 100 ft.	15 ft.	30 ft.

The overall depth of the property, including the road at 277 McHenry Ave ranges from 120 feet to 137 feet. However, the lot at 227 McHenry Avenue is unique due to existing McHenry Avenue bisecting the lot into two sections, referred to as the east and west portions throughout this reports. The depth of the east portion (location of the proposed accessory apartment) of the lot ranges from 42 feet to 55 feet. Due to the unique constraints of the site and the public road that has been dedicated by use, the Planning Dept. has determined that review setbacks from the 4 corners of the lot is inapplicable. The site technically calls for 2 front yard setbacks, 2 rear yard setbacks and 4 sides. Consequently, the Planning Dept. reviewed the lot in two separate portions which are both under 75' in depth which puts the setbacks at 10 feet each with a total of 20 feet. Furthermore, the LMC indicates that setbacks are the required minimum distance between a building pad and the property line, platted street, or existing curb/edge of a street, whichever is closer.

The applicant is requesting the rear yard setback be reduced from 10 feet to 5 feet for the east portion of 277 McHenry Ave. The Planning Department finds that with McHenry bisecting the lot, this creates a unique and unreasonable hardship for the applicant that can be supported by the criteria for Variances as described below. The rear yard property line backs up to a City owned parcel zoned Estate, used for trails and open space. Trails and Open Space Manager provided the submitted comments provided in Exhibit F.

The Accessory apartment criterion is determined by Section 15-4-7 of the LMC.

A. CRITERIA FOR USE.

1. **SIZE.** Accessory Apartments may be no more than one third (1/3) of the dwelling size, shall be limited to a maximum floor Area of 1,000 square feet and shall be no less than 400 square feet with no more than two (2) Bedrooms. An Accessory Apartment may not increase the floor Area of a Structure over the maximum floor Area as specified in the Land Management Code or Subdivision approval.

The accessory apartment complies with all the applicable requirements except two of the conditions for Size (15-4-7(A) 1). According to the criteria, the accessory apartment may have a

maximum of 700 sf. in floor area based on the existing dwelling size of 2,100 sf in addition to a maximum size of 1,000 square feet. The applicant created a design that proposes a total square footage of 1,166.45 sf. for the Accessory Apartment, excluding the garage. Based on the drawings the proposed accessory apartment garage is 775 square feet. Garages up to 400 square feet and anything below existing final grade is not counted in gross residential floor area thus is not included in the overall square footage of the accessory apartment.

Summary

The Planning Department reviewed the constraints of the lot and the existing structure and finds support of the maximum floor Area of 1,000 square feet. The intent of the code for accessory apartments is to create a structure that is for the benefit of the principle use which is incidental to the principal dwelling. Staff finds that a maximum of 1,000 sf. respects the intent of the code for the accessory apartment to clearly be viewed as the accessory use to the primary dwelling. Allowing 1,000 square feet also allows for a reasonable accessory apartment that does not penalize the owner for having a smaller primary structure to begin with. In this specific case, a 1,000 floor area for the proposed accessory apartment equates to 47.6% of the dwelling size, which is 14.3% more than the maximum of 33.3% (1/3).

Additionally, due to the non-conforming duplex use in the existing structure, if the accessory apartment is approved, staff recommends that the approval would be limited to conditioning the owner to return the existing duplex to a single-family dwelling, therefore keeping the density of the lot neutral to what is existing. Staff would not be able to support an accessory apartment to a site with an existing duplex as the density would increase past an already 2 unit lot and the parking needs would still not be met. Staff would only support the accessory apartment if the applicant is willing to forego their duplex by submitting appropriate permits, and completing the work to accommodate a single-family dwelling instead. Should this be the case, staff would also recommend placing a deed restriction on the property that indicates that the City approved use would be limited to a single-family dwelling and the accessory apartment cannot be separately sold.

Approving the accessory apartment to be built would also clean up the parking situation that the existing duplex has created. A duplex requires 2 parking spaces per unit. Currently 2 legal, paved parking spaces exist for 277 McHenry. If the accessory apartment is approved with the 2 car garage (as proposed) and the duplex becomes a single-family dwelling, each unit will have the appropriate amount of parking spaces for the uses.

LMC Review Criteria for a Variance

In order to grant the requested variances to the aforementioned code sections, the Board of Adjustment must find that **all** five (5) criteria located in LMC § 15-10-9 are met. The applicant bears the burden of proving that all of the conditions justifying a variance have been met (see Exhibit D).

Variance No. 1 – Setback:

Applicant requests that the rear property line is reduced from 10 feet to 5 feet. The variance regulation from the LMC is underlined below:

Criteria 1. Literal enforcement of the LMC would cause an unreasonable hardship for the Applicant that is not necessary to carry out the general purpose of the LMC. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection 15-10-9(C)(1), the BOA may not find an unreasonable hardship unless the alleged hardship is located on or associated with the Property for which the variance is sought and

comes from circumstances peculiar to the Property, not from conditions that are general to the neighborhood. In determining whether or not the enforcement of the LMC would cause unreasonable hardship the BOA may not find an unreasonable hardship if the hardship is self-imposed or economic. **Complies.**

In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection 15-10-9(C)(1), the Board of Adjustment may not find an unreasonable hardship unless the alleged hardship is located on or associated with the Property for which the variance is sought and comes from circumstances peculiar to the Property, not from conditions that are general to the neighborhood.

In determining whether or not enforcement of the Land Management Code would cause unreasonable hardship under Subsection 15-10-9(C)(1), the Board of Adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic.

Staff finds that literal enforcement of the required 10 foot rear yard setback is a hardship and is not necessary to carry out the general purpose of the Land Management Code, as the proposed accessory apartment will be setback 5 feet from the rear property line and not negatively affect the trails and open space abutting the property line. By reducing the required rear yard setback from 10 feet to 5 feet, the applicant is able to construct a 2 car garage that will largely be buried below existing grade with a reasonable sized apartment above.

The alleged hardship consists of an existing road, McHenry, which bifurcates the subject site. The location of the McHenry Road, splitting the subject site in two, does not allow any construction in that same location. Because a road is located in the middle of the lot, the only amenable solution is to push the proposed accessory apartment towards the rear creating the need to deviate from the minimum rear yard setback of 10 feet to 5 feet. Staff finds compliance with this criterion for this specific variance. The alleged hardship is not self-imposed or economic as the site has had a “road running through it” for a while.

Criteria 2. **There are special circumstances attached to the Property that do not generally apply to other Properties in the same zone. In determining whether or not there are special circumstances attached to the Property the BOA may find that special circumstances exist only if the special circumstances relate to the hardship complained of and deprive the Property of privileges granted other Properties in the same zone. **Complies.****

Staff finds there are circumstances peculiar to this property that are unique and are not conditions that are general to the neighborhood, such as the road wholly bisects the property and requiring additional setbacks. It is likely that other lots in the neighborhood exist that have a road creating odd shaped lots or oddities but not completely dividing the lot into two portions separated by the existing road.

Criteria 3. **Granting the variance is essential to the enjoyment of a substantial Property right possessed by other Property in the same zone. **Complies.****

Staff finds that the granting the variance is essential. If McHenry did not run directly through the middle of the property there could be substantially more room and less setback requirements for an accessory apartment on the property. Staff does not agree with the applicant regarding the listed health necessities as the applicant can change the

heating system. Staff finds that the essential enjoyment of the property is affected by the location of McHenry Avenue and finds that granting of the variances to the rear yard setback allow essential enjoyment of a substantial Property right that is possessed by other Property in the HRL District.

Criteria 4. The variance will not substantially affect the General Plan and will not be contrary to the public interest. **Complies.**

Staff does not find that the proposed variance will substantially affect the General Plan or the public interest.

Criteria 5. The spirit of the Land Management Code is observed and substantial justice done. **Complies.**

Staff finds that granting the variances to the rear setback allows the spirit of the Land Management Code to be observed and substantial justice to be done. Granting the variance will allow the applicant to construct a 2 car garage for a reasonably sized accessory apartment in a detached structure that will adhere to all setback requirements except for the rear reduction. The variance permits the owner to increase off-street parking to match the appropriate amount of spaces per unit. All other LMC related site and lot criteria, including the other setbacks, height, footprint, parking, design, uses, etc. will be met.

Variance No. 2 – Accessory Apartment Size (1/3 of Main Dwelling):

Applicant requests that the Accessory Apartment be more than 1/3 of the main dwelling. The variance regulation from the LMC is underlined below:

Criteria 1. Literal enforcement of the LMC would cause an unreasonable hardship for the Applicant that is not necessary to carry out the general purpose of the LMC. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection 15-10-9(C)(1), the BOA may not find an unreasonable hardship unless the alleged hardship is located on or associated with the Property for which the variance is sought and comes from circumstances peculiar to the Property, not from conditions that are general to the neighborhood. In determining whether or not the enforcement of the LMC would cause unreasonable hardship the BOA may not find an unreasonable hardship if the hardship is self-imposed or economic. **Complies.**

In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection 15-10-9(C)(1), the Board of Adjustment may not find an unreasonable hardship unless the alleged hardship is located on or associated with the Property for which the variance is sought and comes from circumstances peculiar to the Property, not from conditions that are general to the neighborhood. **Complies.**

In determining whether or not enforcement of the Land Management Code would cause unreasonable hardship under Subsection 15-10-9(C)(1), the Board of Adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic. **Complies.**

Staff finds that literal enforcement of the maximum Accessory Apartment size, which is based on the size of the main dwelling (proportional), is not necessary to carry out the purpose of the LMC. The Accessory Apartment is clearly incidental to the primary dwelling and Staff does not find that it is the intent of the LMC to require owners to first

increase the size of the main dwelling or to penalize owners of smaller primary dwelling sizes. If the site did not have a road bifurcating the site, the property owner would be able to build a bigger main dwelling and the proportion of the main dwelling would be increased, e.g., if the main dwelling was 4,500 sf., the maximum Accessory Apartment on this site would be 1,500 (1/3). Because the road bifurcates the site, the applicant is unable to add to the main building, which affects the size of the proposed Accessory Apartment. Staff finds that provided the Accessory Apartment does not exceed the maximum size of 1,000 sf as conditioned and the fact that it is in a detached structure separated from the main dwelling the purposes of the LMC are met. Staff finds compliance with this criterion for this variance.

Criteria 2. There are special circumstances attached to the Property that do not generally apply to other Properties in the same zone. In determining whether or not there are special circumstances attached to the Property the BOA may find that special circumstances exist only if the special circumstances relate to the hardship complained of and deprive the Property of privileges granted other Properties in the same zone. **Complies.**

Staff finds that the special circumstance attached to the Property, that is unique and not general to the neighborhood, is that the road wholly bisects the property limiting what can be built on the site. If the road was not there, the Applicant would have more room for a bigger main dwelling which would allow a bigger Accessory Apartment.

Criteria 3. Granting the variance is essential to the enjoyment of a substantial Property right possessed by other Property in the same zone. **Complies.**

Staff finds that the granting the variance is essential. If McHenry did not run directly through the middle of the property there could be substantially more room for a bigger house which would then allow a bigger Accessory Apartment on the property. Staff does not agree with the applicant regarding the listed health necessities as the applicant can change the heating system. Staff finds that the essential enjoyment of the property is affected by the location of McHenry Avenue and finds that granting the variance to the Accessory Apartment size, more than 1/3, based on the main dwelling size, allow essential enjoyment of a substantial Property right that is possessed by other Property in the HRL District.

Criteria 4. The variance will not substantially affect the General Plan and will not be contrary to the public interest. **Complies.**

Staff does not find that the proposed variance will substantially affect the General Plan or the public interest.

Criteria 5. The spirit of the Land Management Code is observed and substantial justice done. **Complies.**

Staff finds that granting the variances to the maximum Accessory Apartment size that is based on the main dwelling, allows the spirit of the Land Management Code to be observed and substantial justice to be done. Granting the variance will allow the applicant to construct a 2 car garage for a reasonably sized accessory apartment in a detached structure that will adhere to all setback requirements except for the rear reduction. The variance permits the owner to increase off-street parking to match the

appropriate amount of spaces per unit. All other LMC related site and lot criteria, including the other setbacks, height, footprint, parking, design, uses, etc. will be met.

Variance No. 3 – Accessory Apartment Size (Maximum 1,000 sf):

Applicant requests that the Accessory Apartment be more than maximum of 1,000 sf.

Criteria 1. Literal enforcement of the LMC would cause an unreasonable hardship for the Applicant that is not necessary to carry out the general purpose of the LMC. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection 15-10-9(C)(1), the BOA may not find an unreasonable hardship unless the alleged hardship is located on or associated with the Property for which the variance is sought and comes from circumstances peculiar to the Property, not from conditions that are general to the neighborhood. In determining whether or not the enforcement of the LMC would cause unreasonable hardship the BOA may not find an unreasonable hardship if the hardship is self-imposed or economic. **Does not comply.**

In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection 15-10-9(C)(1), the Board of Adjustment may not find an unreasonable hardship unless the alleged hardship is located on or associated with the Property for which the variance is sought and comes from circumstances peculiar to the Property, not from conditions that are general to the neighborhood. **Does not comply.**

In determining whether or not enforcement of the Land Management Code would cause unreasonable hardship under Subsection 15-10-9(C)(1), the Board of Adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic. **Does not comply.**

Criteria 2. There are special circumstances attached to the Property that do not generally apply to other Properties in the same zone. In determining whether or not there are special circumstances attached to the Property the BOA may find that special circumstances exist only if the special circumstances relate to the hardship complained of and deprive the Property of privileges granted other Properties in the same zone. **Does not comply.**

Criteria 3. Granting the variance is essential to the enjoyment of a substantial Property right possessed by other Property in the same zone. **Does not comply.**

Criteria 4. The variance will not substantially affect the General Plan and will not be contrary to the public interest. **Does not comply.**

Criteria 5. The spirit of the Land Management Code is observed and substantial justice done. **Does not comply.**

Addressing variance criteria 1 – 5, staff find the following: Literal enforcement of the maximum Accessory size of 1,000 sf. is required to carry out the purposes of the LMC, to protect residential neighborhoods, and to maintain Accessory Apartments as an accessory use on the lot. This regulation is not proportionally tied to the house size. In essence, regardless of house size in no case an Accessory Apartment is able to be more than 1,000 sf. Staff does not see a relationship between the hardship of the site, the bifurcating road, and the hard regulation city wide consisting of 1,000 sf. Increasing the size of the Accessory Apartment to a size greater than 1,000 square feet is not essential to the enjoyment of this Property right. The proposed variance will substantially affect the General Plan or the public interest. The spirit of the Land

Management Code is not observed and substantial justice is not accomplished

Future Process

Approval or denial of these variances by the Board of Adjustment constitutes Final Action that may be appealed following the procedures found in LMC § 15-10-13. Approval of a Historic District Design Review (HDDR) application, approval of a Steep Slope CUP Permit, approval of a Plat Amendment, and an approval for a CUP for the accessory apartment is necessary prior to the issuance of a building permit.

Standards for new construction as listed within the Historic District Design Guidelines will apply. HDDR's are an administrative approval and are processed by the Planning Staff. A steep slope Conditional Use Permit, issued by the Planning Commission, is required because the new structure will exceed 200 square feet in area on an area with a slope of greater than 30%. A Plat Amendment for any new construction on the lot will require issuance by the City Council, if the applicant intends to complete any new work on the exterior of the existing non-complying structure. A Conditional Use Permit for the accessory structure, issued by the Planning Commission, is required because an Accessory Apartment is a Conditional Use in the HR-L zone.

Department Review

This project has gone through an interdepartmental review. The Open Space Manager expressed concerns about a reduced setback adjacent to City's Public Open Space due to concerns with vegetation removal to meet requirements of the Wildland Urban Interface Zone. Staff believes this issue can be addressed with Conditions of Approval during the design phase with the Steep Slope Conditional Use Permit application.

Notice

On March 2, 2017, the property was posted and notice of the variance request was mailed to property owners within 300 feet of the property in accordance with requirements of the Land Management Code. Legal notice was published in the Park Record on March 4, 2017, according to requirements of the Code.

Public Input

No public input was received at the time of writing this report.

Alternatives

- The Board of Adjustment may grant the Planning Department's supported variance request according to the findings of fact, conclusions of law and conditions of approval drafted below and/or as amended; or
- The Board of Adjustment may grant the variance request pertaining to the applicants proposal and direct staff to make findings of fact to support this decision; or
- The Board of Adjustment may approve or deny any combination thereof and direct staff to make findings of fact to support the decision; or
- The Board of Adjustment may deny the variance request and direct staff to make findings of fact to support this decision; or
- The Board of Adjustment may continue the discussion and request additional information on specific items.

Significant Impacts

There are no significant fiscal or environmental impacts from this application.

Consequences of not taking the Suggested Recommendation

The property would remain as is and no construction of the proposed accessory apartment could take place. Should the BOA not grant a variance to reduce the rear yard setback from 10 feet to 5 feet and allow the additional square footage per the applicants request, the applicant will not be permitted to construct an accessory apartment as proposed and would need to reduce the overall square footage. The existing duplex will remain under parked for the amount of units that exist. A lot line will remain running through the two old town properties and no exterior work would be approved that increased any non-conformities.

Recommendation

Staff recommends that the Board of Adjustment review, conduct a public hearing, and grant the request for two (2) variances: (1) Land Management Code Section 15-2.1-3 (E) Rear Yard Setbacks and (2) Land Management Code Section 15-4-7(A), Accessory Apartment Size based on the Floor Area of the main dwelling, and deny one (1) variance: Land Management Code Section 15-4-7 (A) Maximum floor area of an Accessory Apartment of no more than 1,000 sf. based on the findings of fact, conclusions of law, and conditions of approval as outlined in this report.

Findings of Fact

1. The property is located at 277 McHenry Avenue in the Historic Residential-Low Density (HRL) District.
2. The property consists of all of Lot 12 and half of Lot 11 of Block 60 of the Park City Survey.
3. Adjacent land uses are residential single family homes.
4. The applicant is requesting a variance to reduce the rear yard setback requirement (LMC Section 15-2.1-3 (E) – Rear Yard Setback in the HRL District) from the required 10' to 5' for construction of a detached garage and accessory apartment on the eastern portion of the Lot.
5. The applicant is requesting a variance to the allowable Floor Area of an Accessory Apartment (LMC Section 15-4-7 (A) 1 - SIZE) that is based on not more than 1/3 the floor area of the main dwelling. Allowable floor area, based on the 2,100 sf main dwelling is 700 sf and applicant requests 1,166.45 sf.
6. The applicant is requesting a variance to the maximum floor area of an Accessory Apartment (LMC Section 15-4-7 (A) 1 – SIZE) of no more than 1,000 sf. The applicant requests a maximum floor area for the Accessory Apartment of 1,166.45 sf.
7. On November 2, 2016, the Planning Department received an application for a variance request to the minimum rear yard setback, as well as the maximum Accessory Apartment Size requirements. The application was deemed complete on December 28, 2016.
8. The subject site contains a total of 4,381 square feet minus the road.
9. The western portion of 277 McHenry is a total of 2,557 sq. ft.
10. The eastern portion of 277 McHenry is a total of 1,824 sq. ft.
11. The road equates to 452 sq. ft.
12. The existing duplex is 2,100 sq. ft. with a footprint of 700 sq. ft. Maximum footprint allowed on the lot is 1,712.2 sf., based on the total lot area (minus the road). No variance to the maximum footprint is requested.
13. The minimum lot size in the HRL is 3,750 sf.
14. The accessory apartment design proposes 823.2 sf. footprint.
15. The design includes construction of an accessory apartment with a two-car garage at the basement-level with living space and decks above it.
16. In the HRL zone, an accessory apartment is a Conditional Use.

17. The Duplex was built in 1973 over two property lines. No building permits could be located.
18. The east portion lot's accessory structure proposal proposes a front yard setback of 10 feet which complies and a 5 foot rear yard setback which requires an approved variance.
19. Side yard setbacks for the lot are 3 feet minimum and 6 feet combined. The proposal meets the side yard setback requirements.
20. Parking requirements for a Single Family home is 2 spaces per dwelling unit.
21. Parking requirements for a Duplex dwelling is 2 spaces per dwelling unit.
22. Parking requirements for an accessory apartment are 1 space per bedroom.
23. The accessory apartment is proposing 2 bedrooms and 2 parking spots.
24. A permit for an Accessory Apartment may not be granted if more than three (3) of the homes within three hundred feet (300') of the Applicant's Property boundary contain other established Accessory Apartments. There may be no more than four (4) Accessory Apartments within a three hundred foot (300') radius.
25. According to City Records there are no other Accessory Apartments permitted y the City within 300' of the property.
26. The depth of the east portion of the lot ranges from 42 feet to 55 feet.
27. With McHenry bisecting the lot, this creates a unique and unreasonable hardship for the applicant and can support finding good cause for the reduction of rear yard setback.
28. The intent of the code for accessory apartments is to create a structure that is for the benefit of the principle use which is incidental to the principal dwelling.
29. Currently 2 legal, paved parking spaces exist for 277 McHenry. If the accessory apartment is approved with the 2 car garage (as proposed) and the duplex becomes a single family dwelling, each unit will have the appropriate amount of parking spaces for the uses.
30. Literal enforcement of the required 10 foot rear yard setback is a hardship and is not necessary to carry out the general purpose of the Land Management Code, as the proposed accessory apartment will be setback 5 feet from the rear property line.
31. By reducing the required rear yard setback from 10 feet to 5 feet, the applicant is able to construct a 2 car garage that will largely be buried below existing grade with a reasonable sized apartment above.
32. The alleged hardship consists of an existing road, McHenry, which bifurcates the subject site.
33. The location of the McHenry Road, splitting the subject site in two, does not allow any construction in that same location.
34. Because a road is located in the middle of the lot, the only amenable solution is to push the proposed accessory apartment towards the rear creating the need to deviate from the minimum rear yard setback of 10 feet to 5 feet.
35. The alleged hardship is not self-imposed or economic as the site has had a "road running through it".
36. There are circumstances peculiar to this property that are unique and are not conditions that are general to the neighborhood requiring additional setbacks.
37. It is likely that other lots in the neighborhood exist that have a road creating odd shaped lots or oddities but not completely dividing the lot into two portions separated by the existing road.
38. Essential enjoyment of the property is affected by the location of McHenry Avenue.
39. Granting of the variance to the rear yard setback allows essential enjoyment of a substantial Property right that is possessed by other Property in the HRL District.
40. Granting the variance will allow the applicant to construct a 2 car garage for a reasonably sized accessory apartment in a detached structure that will adhere to all setback requirements except for the rear reduction.
41. The setback variance permits the owner to increase off-street parking to match the appropriate amount of spaces per unit.

42. All other LMC related site and lot criteria, including the other setbacks, height, footprint, parking, design, uses, etc. will be met.
43. The Accessory Apartment is clearly incidental to the primary dwelling and Staff does not find that it is the intent of the LMC to require owners to first increase the size of the main dwelling or to penalize owners of smaller primary dwelling sizes.
44. Literal enforcement of the maximum Accessory size of 1,000 sf. is required to carry out the purposes of the LMC, to protect residential neighborhoods, and to maintain Accessory Apartments as an accessory use on the lot. This regulation is not proportionally tied to the house size.
45. There is no relationship between the hardship of the site, the bifurcating road, and the hard regulation city wide consisting of 1,000 sf.
46. Increasing the size of the Accessory Apartment to a size greater than 1,000 square feet is not essential to the enjoyment of this Property right.
47. The proposed variance will substantially affect the General Plan or the public interest. The spirit of the Land Management Code is not observed and substantial justice is not accomplished
48. On March 2, 2017, the property was posted and notice of the variance request was mailed to property owners within 300 feet of the property in accordance with requirements of the Land Management Code.
49. Legal notice was published in the Park Record on March 4, 2017, according to requirements of the Code.
50. No public input was received at the time of writing this report.
51. If the variance is not approved the property would remain as is and no construction of the proposed accessory apartment could take place. Should the BOA not grant a variance to reduce the rear yard setback from 10 feet to 5 feet and allow the additional square footage per the applicants request, the applicant will not be permitted to construct an accessory apartment as proposed and would need to reduce the overall square footage. The existing duplex will remain under parked for the amount of units that exist. A lot line will remain running through the two old town properties and no exterior work would be approved that increased any non-conformities.
52. All other LMC related site and lot criteria, including the other setbacks, height, footprint, parking, design, uses, etc. will be met.

Conclusion of Law (Variance 1 & 2)

1. Literal enforcement of the HR-L District requirements for this property causes an unreasonable hardship that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same district.
3. Granting the variance is essential to the enjoyment of substantial property right possessed by other property owners in the same district.
4. The proposal is consistent with the General Plan.
5. The spirit of the zoning ordinance is observed by this application.
6. It can be shown that all of the conditions justifying a variance, pursuant to LMC § 15-10-9, have been met.

Conclusion of Law (Variance 3)

1. Literal enforcement of the HR-L District requirements for this property does not cause an unreasonable hardship and is necessary to carry out the general purpose of the zoning ordinance.
2. There are no special circumstances attached to the property that do not generally apply

- to other properties in the same district.
3. Granting the variance is not essential to the enjoyment of substantial property right possessed by other property owners in the same district.
 4. The proposal is not consistent with the General Plan.
 5. The spirit of the zoning ordinance is not observed by this application.

Order

1. A variance to LMC Section 15-2.1-3 (E) – to the required 10 foot rear yard setback to allow a 5 foot rear yard setback on the rear portion of the property, **is hereby granted.**
2. A variance to LMC Section 15-4-7 (A) 1 – to the required 1/3 size requirement of the existing dwelling unit to allow 1,000 square feet of maximum floor area, **is hereby granted.**
3. A variance to LMC Section 15-4-7 (A) 1 – to the required maximum floor area of an Accessory Apartment (LMC Section 15-4-7 (A) 1 – SIZE) of no more than 1,000 sf, **is hereby denied.**

Conditions of Approval

1. Recordation of the plat amendment is required prior to issuance of a building permit for the new construction.
2. Approval of an HDDR and a SS CUP are required prior to issuance of a building permit for the new construction.
3. Approval of a CUP for an Accessory apartment is required prior to issuance of a building permit for the new construction.
4. Prior to certificate of occupancy issuance for the Accessory Apartment, the existing duplex shall be converted to a single family residence.

Exhibits

Exhibit A – Applicant's statement

Exhibit B – Aerial View of lot

Exhibit C – Park City Survey, Block 60 Lot 12 & the North ½ of Lot 11, Existing
Conditions Survey

Exhibit D – Proposed Plat

Exhibit E – Proposed Site Plan

Exhibit D – Proposed plans

Exhibit E – Current photographs of the site

Exhibit F – Development Review Committee Comments Regarding Open Space

Exhibit A – Applicant’s statement

BOARD OF ADJUSTMENT – VARIANCE APPLICATION

Applicant: Michael E. Kaplan, 277 McHenry Ave., Park City, UT 84060.

BACKGROUND INFORMATION:

For the last 18 years I have lived at 277 McHenry Ave. (formerly 355), Old Town, Park City. The property is in the H.R.L. zone. I own lot 12, and the north half of lot 11 in Block 60, Park City Survey.

My lot area is +/- 4,381 sq. ft. The minimum lot area for building in H.R.L. is 3,750 sq. ft. The lot is unique in this zone (and likely all of Old Town) in that a road, McHenry Ave, nearly exactly bisects it. This is an obvious hardship as property setback rules and zone restrictions were apparently not designed to address this contingency. My current house sits on the westerly section of the bisected lot, which is 2,557 sq. ft. The easterly half of my property (which includes the road (+/- 452 sq. ft.)) is 1,824 sq. ft.

My house is a 2,100 sq. ft. three floor modified A-frame built in 1973. It does not have a garage. Currently the house is an allowable non-conforming duplex (grandfathered) with an apartment in the lower level of the house.

Approximately ten years ago I prevailed in an expensive lawsuit when a neighbor was claiming part of my land. This is the part of my property where I’m trying to build my new structure. I now have clear title to the entire lot identified above.

I have been in discussions with the Planning Department for many years now. More than once we’ve agreed on a matter only to have yet a new issue arise and negate our understanding. My goal is to build a small house and garage that I will live in and I will rent my current house to a local family.

Initially and my preference, was to divide the property into two lots of record and to have a house on each. This concept would have been simpler and more efficient. Ultimately, Staff did not support it so we have withdrawn the two lots of record proposal.

REQUESTED VARIANCE: To raise the livable square footage of the Accessory Structure from an allowable 700 sq. ft. to +/- 1,500 sq. ft.

As stated above, the primary house is 2,100 sq. ft. and code allows for an accessory structure to only be 1/3 of the primary structure, equaling 700 sq. ft. Since I will be living in the new structure, simply put, 700 sq. ft. is insufficient for a year-round livable home.

Application of Land Management Code 15-10-9 Variances:

1. **Literal enforcement would cause a hardship:** *The L.M.C. does not account for a road (in this case McHenry Ave.) bisecting a property; which obviously constitutes a hardship. Had it not been for that road, it is likely that the primary house would be approximately 4,500 sq. ft.; therefore an contiguous accessory structure (1/3rd of main structure) of 1,500 would be allowed. Besides the actual road itself, my abiding by the setback requirements from both sides of the road, correspondingly lessens the allowable size of both structures, which also affects my ability to fully enjoy my property.*
2. **Special Circumstances that do not apply to others in H.R.L. zone:** *Other Old Town properties, including ones in the H.R.L. zone, may have small portions with roadway easements/rights-of-way, however, it is my understanding that this is the only Old Town property that is actually bisected by a public road.*
3. **Enjoyment of Property possessed by others in H.R.L. zone:** *Due to health necessities (three sinus surgeries and a forth upcoming), and by Doctor's order, I can no longer stay in my current home (which is heated by forced hot air and that heating system cannot be altered). The new home will have radiant heat. Therefore, for reasons of health and enjoyment of my property, I am only seeking to live in a modestly sized residence. It will be compatible in size, scale and architectural design with my neighbors.*
4. **Not contrary to public interest:** *The proposed accessory apartment will only be +/-1,500 livable sq. ft. and will have a two-car parking garage. Currently cars park horizontally next to the street, which is a snow plow hazard (incl. this current winter). A garage would be a safety and aesthetic benefit and amenity to the neighborhood.*
5. **Within the spirit of LMC/justice done:** *I have been through a costly lawsuit (to define my property boundaries), approximately nine years of on and off discussions with the Park City Planning Department, and have incurred expensive surveying and architectural expenses. I am only asking to be allowed to build and live in a reasonably sized home on my property.*

ADDITIONAL:

- Parking should not be an issue as there are currently four off-street parking spaces (all are parallel to McHenry Ave.) and the accessory unit/garage would allow for a total of four or five parking spaces, some of which would be perpendicular (which is preferable) to McHenry Ave.
- I have accepted the Planning Department's condition (that in the interest of addressing density and parking issues), the primary house will lose the

“legal, non-conforming duplex” designation. I think it is a shame as the apartment in the lower portion of the house provides year-round housing for work-force employees. The primary house will now be a single-family dwelling.

- I understand I will have to pay for and undergo a Plat Amendment to combine the current lot and a half into a single lot of record.
- I have paid for the Board of Adjustment procedure.
- I will abide by all building and zoning restrictions. Due to the road and the fact the property backs up to open space, a rear yard setback reduction from 10 feet to 5 feet is also requested and has previously been supported by the Planning Department.
- I am flexible regarding the design of the new addition, the architectural drawings reflect a design that is compatible with the buildings in the vicinity, but I am open to any suggested changes.

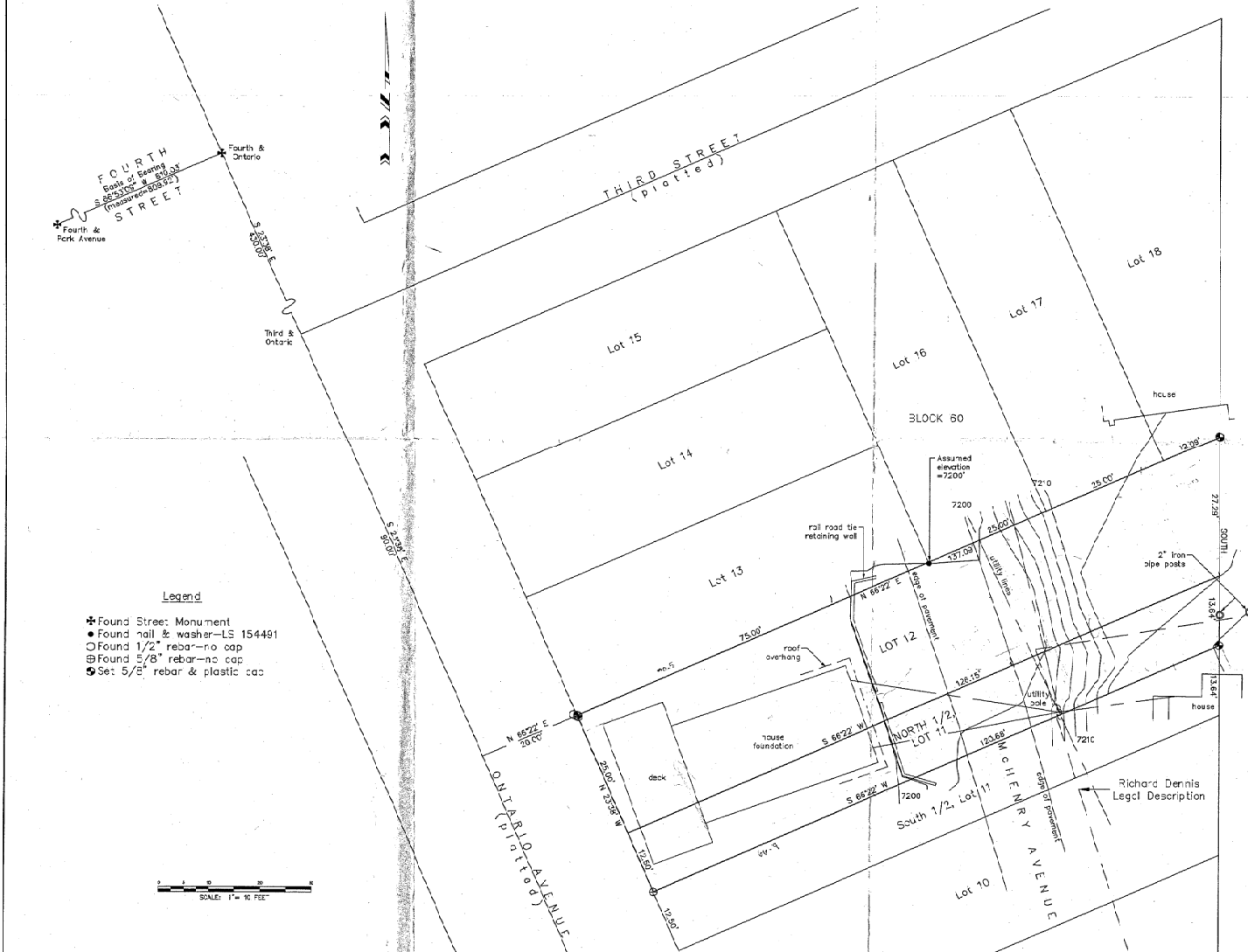
Thank you for your consideration in this matter. - Michael E. Kaplan

Exhibit B – Aerial View of lot



Exhibit C – Park City Survey, Block 60 Lot 12 & the North 1/2 of Lot 11, Existing Conditions Survey

Park City Survey, Block 60,
Lot 12 & the North 1/2 of Lot 11



NARRATIVE

1. Survey requested by: Michael Kaplan.
2. Purpose of survey: locate the specified topographic relief.
3. Basis of survey: found Street Monuments, according to the amendment of Shes: #3 of the Park City Monument Control Map by Eush & Gudgeon, Inc., on file and of record in the office of the Summit County Recorder.
4. Date of survey: May 31, 2002.
5. Properly corners found as shown.
6. Located in the South-east Quarter of Section 16, Township 2 South, Range 4 East, Salt Lake Base & Meridian.
7. The owner of the property should be aware of any items affecting the property that may appear in a title insurance report.
8. For the previous breakdown of Lot 11 see the record of survey No. S-405 by Alliance Engineering, on file in the office of the Summit County Recorder.
9. The Richard Dennis Legal Description as shown encroaches on the property but has a questionable validity. Further title research is recommended.
10. An assumed elevation of 7200 feet was assigned to the nail and washer in the asphalt street at the southwesterly corner of Lot 16, as shown.

LEGAL DESCRIPTION

All of Lot 12 and the North 1/2 of Lot 11, Park City Survey, according to the official plat thereof, on file and of record in the office of the Summit Co. Recorder; containing ±0.11 acres.

SURVEYOR'S CERTIFICATE

I, J.D. Galley, a Registered Land Surveyor as prescribed by the laws of the State of Utah and holding License No. 359205, do hereby certify that I have supervised a survey of the herein described property and that this plat is a true representation of said survey.

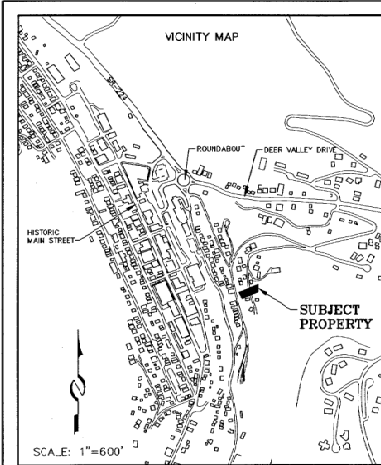
copy



Date: 5/29/02
J.D. Galley

Alpine Survey, Inc.
19 Prospector Drive
Park City, Utah 84050
(435) 655-8016

Exhibit D – Proposed Plat



SURVEYOR'S CERTIFICATE

I, Martin A. Morrison, certify that I am a Registered Land Surveyor and that I hold Certificate No. 4938738, as prescribed by the laws of the State of Utah, and that, by authority of the owners, this Record of Survey map of 277 McHENRY AVENUE PLAT AMENDMENT has been prepared under my direction and that the same has been monumented on the ground as shown on this plat. I further certify that the information on this plat is accurate.

BOUNDARY DESCRIPTION

The North 1/2 of Lot 11 and all of Lot 12, Block 60, PARK CITY SURVEY, according to the official plat thereof on file and of record in the Summit County Recorder's Office.

OWNER'S DEDICATION AND CONSENT TO RECORD

KNOW ALL MEN BY THESE PRESENTS that Michael Ellis Kaplan, Trustee of The WATH TRUST dated January 8, 2015, as his interests appear, hereby certifies that he has caused this Plat Amendment to be prepared and hereby consents to the recordation of the 277 McHenry Avenue Plat Amendment.

Michael Ellis Kaplan,
Trustee of The WATH TRUST dated January 8, 2015

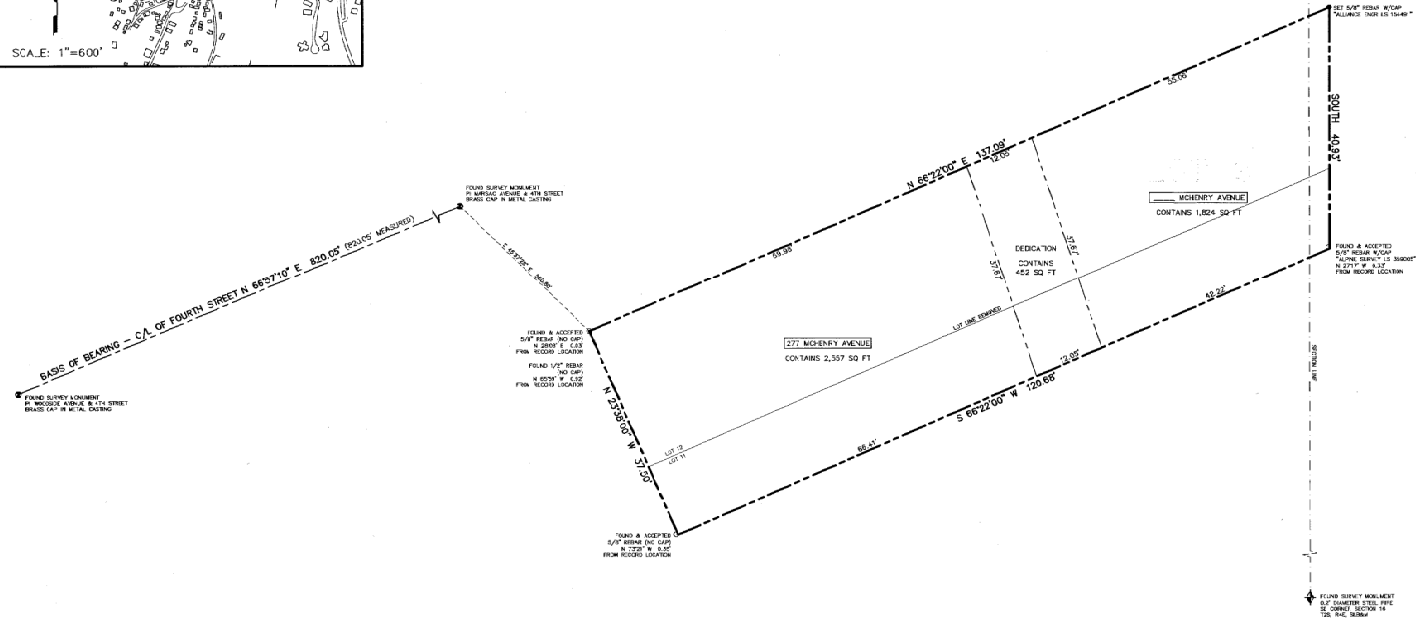
ACKNOWLEDGMENT

State of _____ ss.
County of _____
On this _____ day of _____, 2016, Michael Ellis Kaplan personally appeared before me, the undersigned Notary Public in and for said state and county. Having been duly sworn, Michael Ellis Kaplan acknowledged to me that he is the Trustee of The WATH TRUST dated January 8, 2015, and that he signed the above Owner's Dedication and Consent to Record freely and voluntarily.

A Notary Public commissioned in _____
Printed Name _____
Residing in: _____
My commission expires: _____
Commission No.: _____

NOTE

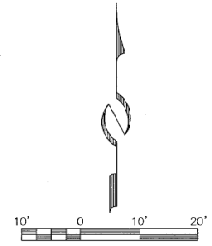
This subdivision is subject to the Conditions of Approval in Ordinance 16-_____



A COMBINATION OF LOT 12 AND THE NORTH HALF OF LOT 11 IN BLOCK 60, PARK CITY SURVEY

277 McHENRY AVENUE PLAT AMENDMENT

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 16
TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN
PARK CITY, SUMMIT COUNTY, UTAH



SHEET 1 OF 1

 (435) 649-9457 CONSULTING ENGINEERS, LAND PLANNERS, SURVEYORS 323 Main Street, P.O. Box 2054, Park City, Utah 84052-2054	SNYDERVILLE BASIN WATER RECLAMATION DISTRICT REVIEWED FOR CONFORMANCE TO SNYDERVILLE BASIN WATER RECLAMATION DISTRICT STANDARDS ON THIS _____ DAY OF _____, 2016 BY _____ S.B.W.R.D.	PLANNING COMMISSION APPROVED BY THE PARK CITY PLANNING COMMISSION THIS _____ DAY OF _____, 2016 BY _____ CHAIR	ENGINEER'S CERTIFICATE I FIND THIS PLAT TO BE IN ACCORDANCE WITH INFORMATION ON FILE IN MY OFFICE THIS _____ DAY OF _____, 2016 BY _____ PARK CITY ENGINEER	APPROVAL AS TO FORM APPROVED AS TO FORM THIS _____ DAY OF _____, 2016 BY _____ PARK CITY ATTORNEY	COUNCIL APPROVAL AND ACCEPTANCE APPROVAL AND ACCEPTANCE BY THE PARK CITY COUNCIL THIS _____ DAY OF _____, 2016 BY _____ MAYOR	CERTIFICATE OF ATTEST I CERTIFY THIS PLAT MAP WAS APPROVED BY PARK CITY COUNCIL THIS _____ DAY OF _____, 2016 BY _____ PARK CITY RECORDER	RECORDED STATE OF UTAH, COUNTY OF SUMMIT, AND FILED AT THE REQUEST OF _____ DATE _____ TIME _____ ENTRY NO. _____ FEE _____ RECORDER _____
	FILED: 09 NO. 4-5-16 FILE: X:\ParkCitySurvey\dwg\ar\plat2016\040216.dwg						

Exhibit E – Proposed Site Plan

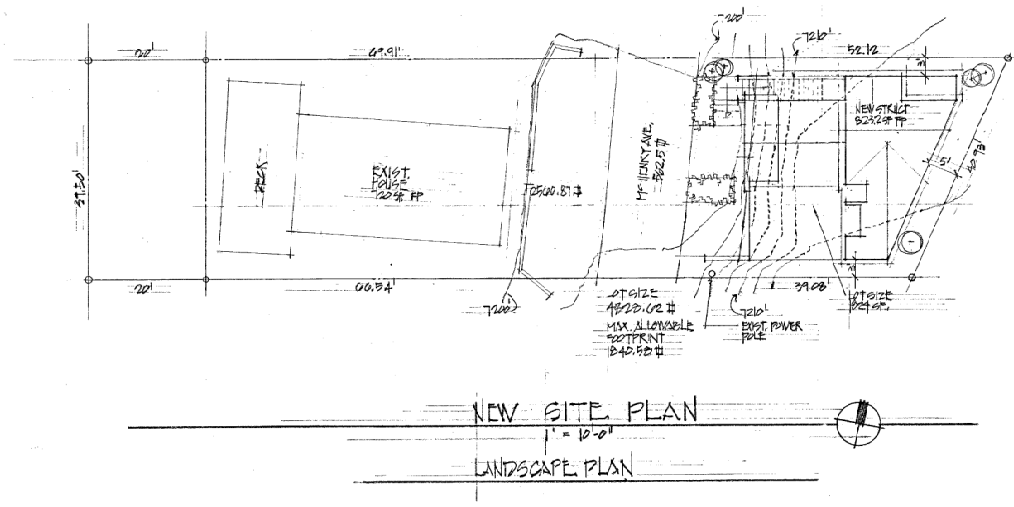
NOTES

1. ALL LANDSCAPE PLANTING SHALL BE PERIPT TYPE PLANTING.
2. ALL OPENED AREAS WITHIN THE LOT SHALL BE GRADED & RE-SEEDING BY STRAIGHT TOLERANT NATIVE GRASSES & WILDFLOWERS.

LANDSCAPE LEGEND

- OPEN CLUMP (3'-0" MIN. HT.)
- EVERGREEN (COLONNADO E-116 SPRUCE - 6'-0" 5'-0" HT.)
- SHRUB (STRAIGHT TOLERANT)
- OAK BRUSH (EXIST.)

- GENERAL NOTES**
1. Comply with IRC Chapter 4 for excavations, fill cuts and grading. Pay special attention to all cuts close to property lines. CUT SLOPES AND GRADE FILLS STEEPER THAN 2:1 REQUIRE SOILS REPORTS ADDRESSING STABILITY. General Contractor shall arrange a meeting with Plan Checker, the General Contractor and the Escrowor for this project prior to any permits being issued.
 2. Tubs and showers with tiled walls require a Portland Cement application, fibred cement or glass mat systems; green board is no longer allowed in this application.
 3. A permanent certificate shall be posted on or in the electrical distribution panel listing the preeminent fire ratings of insulation installed in an attic/ceiling, walls, foundation, slab, basement wall, crawl space wall and/or floor and ducts outside the conditioned spaces; U-factors of windows, and SHGC of windows. The type and efficiency of heating, cooling and air-side water heating equipment shall also be listed. Note: The listing will not allow the drilling or modification of the panel or cover to accomplish this. IRC N1101.9
 4. Special inspection is required for field welding and high strength bolting. 2009 IRC, sections 1704.3.1 and 1704.3.3 epoxy connections.
 5. All electrical installations shall comply with the 2012 IRC and 2011 NEC.
 6. All electrical accessories shall be tamper-resistant.
 7. All plumbing installat ons shall comply with the 2012 IRC.
 8. All mechanical installations shall comply with the 2012 IRC and FCC.
 9. Showers shall be finished to a trim height of not less than 72" above the floor. Material shall be non-absorbent.
 10. Tower cranes require City approval prior to installation. Submit site plan and Air Space Easement with any adjacent property owners impacted.
 11. Surface water shall drain away from the building at all points. Direct two drainages water to the street or an approved drainage course (not onto neighboring properties) The grade shall fall a min. of 6" within the first 10' ft.
 12. Foundation rebar inspections for walls over 8' high shall have forms installed only on one side of wall until rebar has been inspected and approved.
 13. All mechanical vents shall be 8' above grade and 3' above roof.
 14. Heated conc. slabs require R5 insulation.
 15. Heated floors require R-11 insulation.



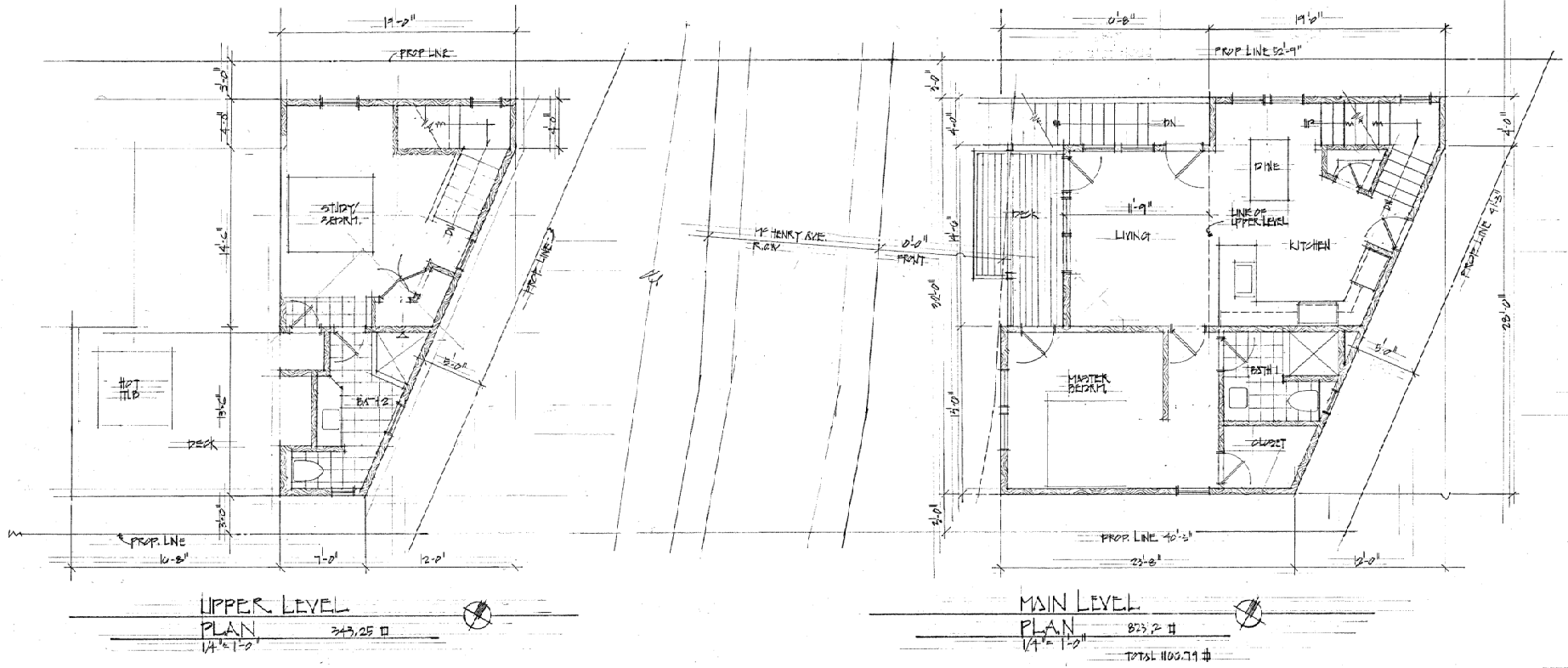
REVISIONS	BY

DAVID G. WHITE, ARCHITECT
P.O. BOX 1919 - 2703 ESTAVES DRIVE
PARK CITY, UTAH 84302
(435) 649-8879
EMAIL: dwhite@dmson.com

NEW SITE & LANDSCAPE PLAN
2711 HENRY AVE
PARK CITY, UTAH 84302

Date: 2-17-17
Scale:
Drawn:
JG
Sheet:
A-1
Of: 1
Sheets:

Exhibit D – Proposed plans

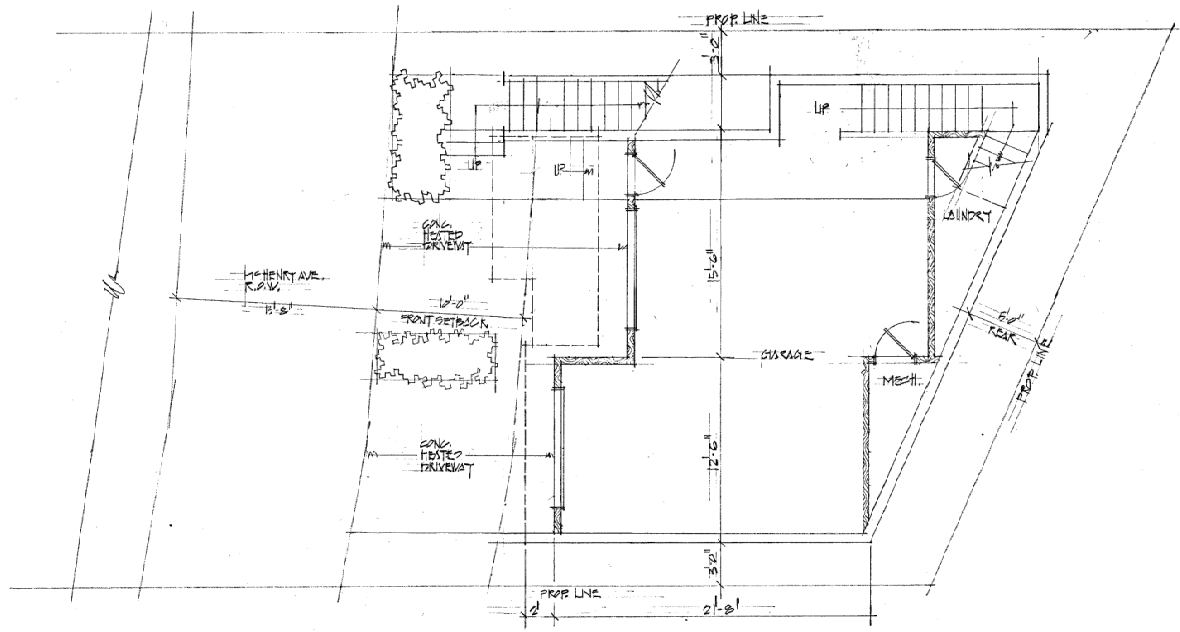


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 (435) 649-3379 FAX: (435) 652-0043
 EMAIL: dwhite@dwgwhite.com

MAIN & UPPER LEVEL FLOOR PLANS
 2771 HENRY AVE
 PARK CITY, UTAH 84302

Date	0-30-16
Scale	
Drawn	
Project	HENRY
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GARAGE LEVEL
 PLAN T12.5 D
 1/4" = 1'-0"

REVISIONS	BY

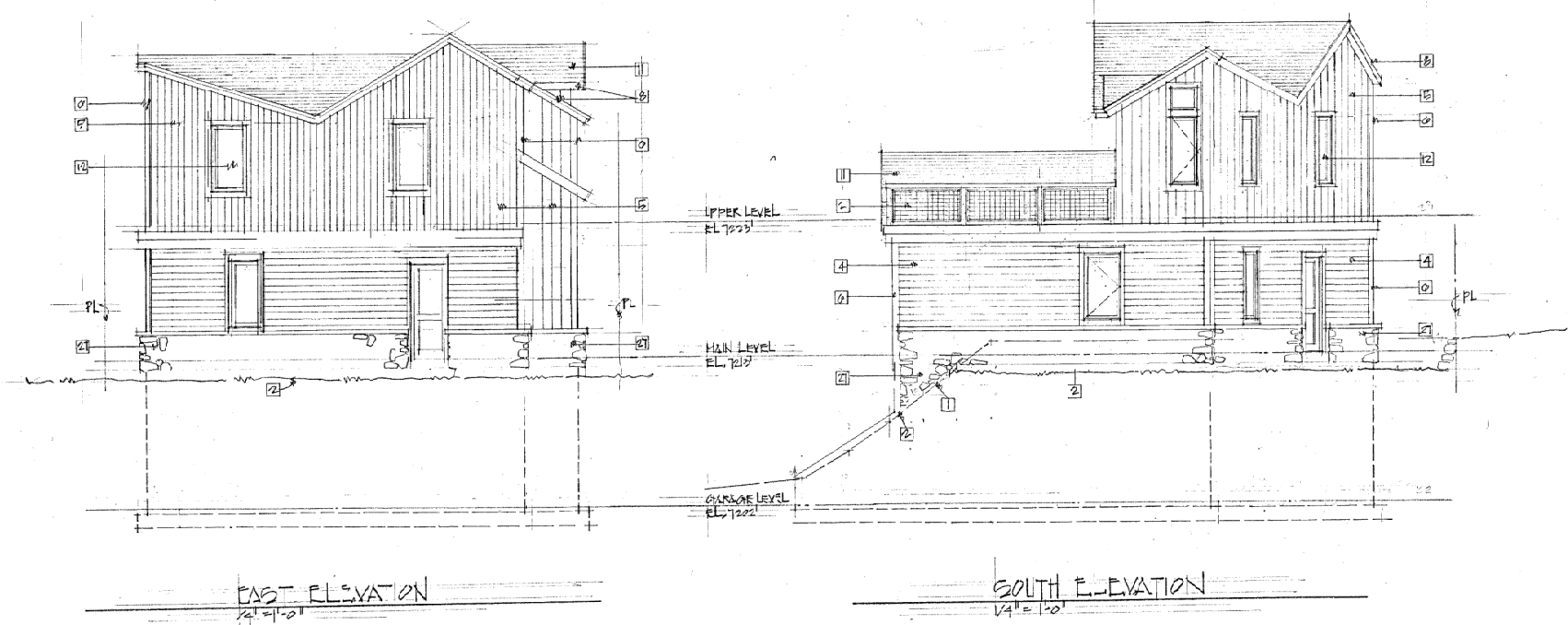
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 (435) 640-0379 FAX: (435) 655-9815
 Email: dwhite@mission.com

GARAGE LEVEL PLAN
 2712 HENRI AVENUE
 PARK CITY, UTAH 84000

Date	6-29-15
Scale	
Drawn	
Checked	STY HENRY
Sheet	A-5
Of	Sheets

REFERENCE NOTES

1. Existing grade shown dashed
2. New finish grade
3. Glue-laminated beam - See framing plans. 1" chamfer all exposed ends. All Glue-lam beams to be smooth finish
4. 1" x 6" beveled Cedar siding - (New addition portion)
5. 1" x 6" cedar siding square cut vertical pattern.
6. 2" x Cedar corner trim.
7. Exterior door and window trim- 2" x cedar jambs, 3" x heads and sills for windows and 3" x heads for doors
8. 1" x Cedar fascia. (two piece) See detail
9. 1" x 4" Cedar soffit.
10. Roof to wall surface - extend ice and water shield over entire roof deck except two feet @ ridges. Where vertical walls intersect roof, extend ice and water shield up wall min. 18" behind exterior siding material
11. Roof Covering - Asphalt shingles, 56 yr rating.
12. Aluminum ext. clad insulated wood windows and doors. Windows and exterior doors U=0.36 or better. See Window and Door Schedule.
13. Galvanized metal flashing.
14. 3" x 3" blown and batted insulation. R=13 min.
15. 3" x 3" blown and batted insulation. R=19 min.
16. Roof insulation shall have one layer at top of roof joists R25 closed cell foam and R 24 blown in batts in lower portion of roof joists. Total R49
17. 30" blown and batted insulation. R=3. min.
18. Waterproof membrane and drainage mat on all foundation walls protecting living space below-grade. Install 5" perforated drain plastic drain wrapped in filter fabric and set in gravel. Extend downhill to daylight.
19. 4" concrete slab on 2" rigid insulation. Install 6 mil plastic vapor barrier under rigid insulation. Install conc., insulation and vapor barrier over 4" gravel base. Install radiant heat tubes.
20. 4" insul. Conc. foundation wall. See structure.
21. Casework see details.
22. Floor joists - see framing plans.
23. Rof joists - see framing plans.
24. See interior finish schedule for floor, wall and ceiling finishes.
25. 4" concrete slab w/ 565-30210 wire mesh on 4" gravel base.
26. Wood overhead garage door with electric operator.
27. Stone veneer - dry stack pattern.
28. 1 1/2" light weight concrete w/ radiant heat tubes.
29. Wood overhead garage doors w/ heavy springs and electric operators.



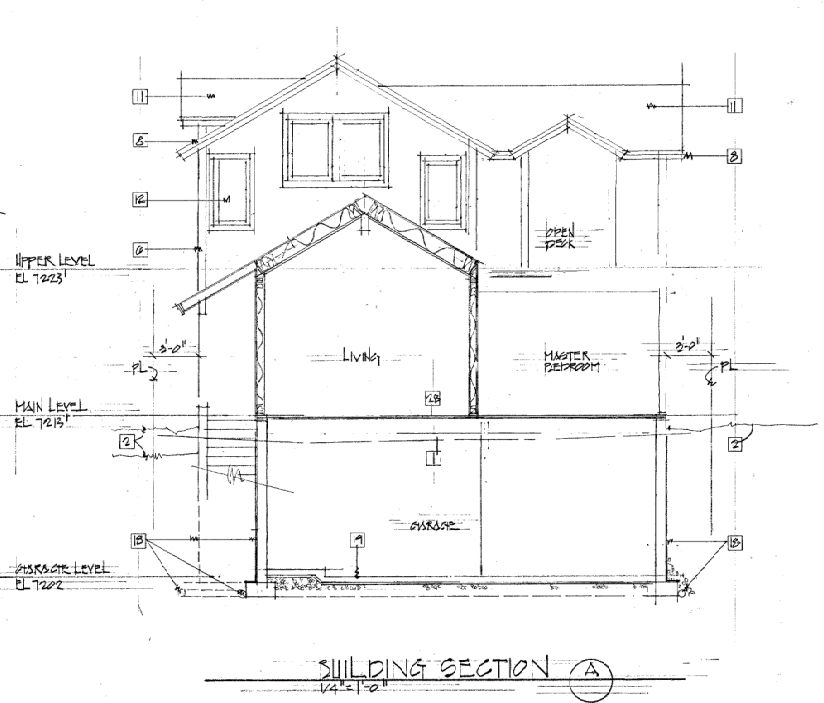
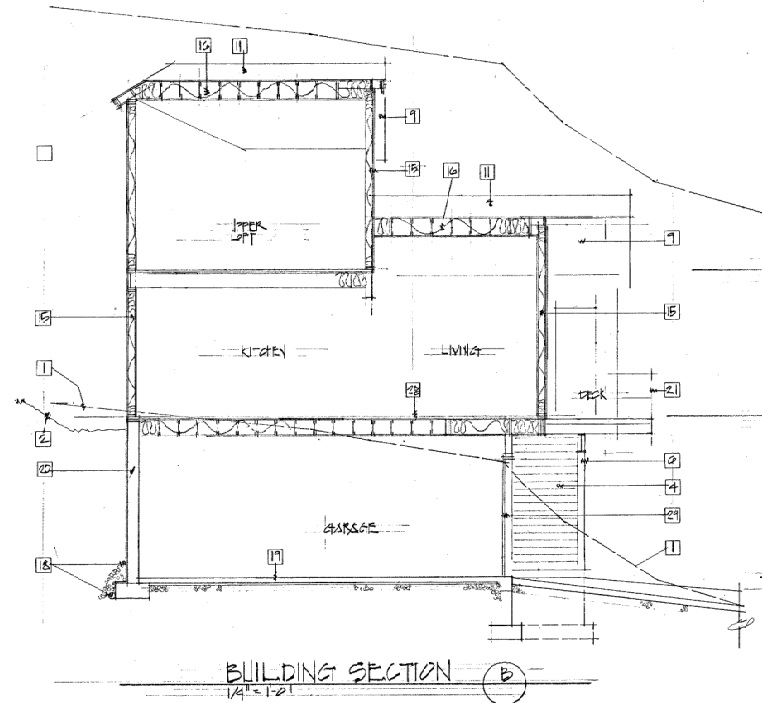
EAST ELEVATION
1/4" = 1'-0"

SOUTH ELEVATION
1/4" = 1'-0"

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BUILDING ELEVATIONS	
271 HENRY AVE. PARK CITY, UTAH 84302	
Date	01-30-16
Scale	
Drawn	
Job	271 HENRY
Sheet	A-5
Cf	Sheets

- REFERENCE NOTES
- Existing grade shown dashed
 - New finish grade
 - Glue-laminated beam- See framing plans. 3" chamfer all exposed ends. All Glue-lam beams to be smooth finish
 - 1" x 6" beveled Cedar's clng. (New addition portion)
 - 1" x 6" cedar siding square cut vertical pattern.
 - 2" Cedar corner trim.
 - Exterior door and window trim- 2" cedar jambs, 3" x heads and sills for windows and 3" x heads for doors
 - 1" x Cedar fascia. (two piece) See detail
 - 1" x 6" Cedar soffits.
 - Roof to wall surface- extend eave and water shield over entire roof deck except two feet @ ridges. Where vertical walls intersect roof, eave and water shield up wall min. 18" behind exterior siding material
 - Roof Covering- Asphalt shingles, 5C or rating.
 - Aluminum ext. clad insulated wood windows and doors. Windows and exterior doors 1/2-3/8 or better. See Window and Door Schedule.
 - Galvanized metal flashing.
 - 3 1/2" blown and bitted insulation. R13 min.
 - 5 1/2" blown and bitted insulation. R= 19 min.
 - Roof insulation shall have one layer at top of roof joists R21 closed cell foam and 8 24 blown in bats in lower portion of roof joists. Total R49
 - 3/4" blown and bitted insulation. R= 31 min.
 - Waterproof membrane and drainage mat on all foundation walls protecting living space below-grade. Install 5' perforated drain plastic drain wrapped in filter fabric and set in gravel. Extend 5/8" to 1" to Skylight.
 - 4" concrete slab on 2" rigid insulation. Install 6 mil plastic vapor barrier under rigid insulation. Install conc., insulation and vapor barrier over 4" gravel base. Install radiant heat tubes.
 - 20' reinf. Conc. foundation wall. See structure.
 - Guardrails see details.
 - Floor joists- see framing plans.
 - See interior finish schedule for floor, wall and ceiling finishes.
 - 4" concrete slab w/ 5/8-30/10 wire mesh on 4" gravel base.
 - Wood overhead garage door with electric operator.
 - Stone veneer in dry stack pattern.
 - 1 1/2" light weight concrete w/ radiant heat tubes.
 - Wood overhead garage doors w/ heavy springs and electric operators.



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BUILDING SECTIONS
 2177 HENRY AVE.
 PARK CITY, UT 84002

Date: 10-30-14
 Scale:
 Drawn:
 399217 HENRY
 Sheet:
 A-6
 Of: Sheets

Exhibit F – Development Review Committee Comments Regarding Open Space

Makena,

The Open Space and Trails Department manages the City's open space property. This management includes wildland fire mitigation efforts.

The wildland fire mitigation program provides mitigation efforts (vegetation clearing) on City-owned property consistent with existing standards, so as to limit, among other things, property damage to surrounding structures.

To that point, the standards (amount/distance of recommended clearing) are based on the location of adjacent structures. Thus, the closer the structure to the open space, the greater the amount of clearing and subsequent cost to provide this mitigation.

This is as much of an environmental concern as it is a financial impact. Staff requests the Board balance this aspect, along with other conditions in their decision making process.

Heinrich Deters
Property, Real Estate, Trails & Open Space Manager
435.615.5205
hdeters@parkcity.org