

**PARK CITY MUNICIPAL CORPORATION  
BOARD OF ADJUSTMENT  
445 MARSAC AVENUE  
CITY HALL COUNCIL CHAMBERS  
May 16, 2017**



## **AGENDA**

**MEETING CALLED TO ORDER - 5:00 PM**

**ROLL CALL**

**ADOPTION OF MINUTES OF March 21, 2017**

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

**STAFF AND BOARD COMMUNICATIONS/DISCLOSURES**

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

277 McHenry Avenue – Variance request to decrease the rear yard setback to 5’ from the zone requirement of 10’. This variance request is a continued item from March 21, 2017. <i>Public hearing and possible action</i>	PL-16-03358 <i>Planner Hawley</i>	23
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**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 MARCH 21, 2017 - DRAFT

BOARD MEMBERS IN ATTENDANCE: Ruth Gezelius – Chair; Hans Fuegi, Jennifer Franklin, Mary Wintzer

EX OFFICIO: Planning Director Bruce Erickson, Francisco Astorga, Planner; Makena Hawley, Planner; Polly Samuels McLean, Louis Rodriguez

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## ROLL CALL

Chair Gezelius called the meeting to order at 5:01 p.m. and noted that the Board did have a quorum.

## ADOPTION OF MINUTES OF FEBRUARY 21, 2017.

Board Member Franklin referred to page 21 of the Minutes. She noted that she was not in attendance; however, the header reading 252 Woodside Avenue, should be corrected to read **352 Woodside Avenue**. She believed it was a clerical error because it accurately reads 352 Woodside everywhere else in the Minutes for that item.

MOTION: Board Member Mary Wintzer moved to APPROVE the minutes of February 21, 2017 as corrected. Board Member Fuegi seconded the motion.

VOTE: The motion passed. Jennifer Franklin abstained from the vote since she was absent from the February 21<sup>st</sup> meeting.

## PUBLIC COMMUNICATIONS

There were no comments.

## STAFF/BOARD MEMBERS COMMUNICATIONS AND DISCLOSURES

Board Member Wintzer disclosed that about a week ago she was out walking and Anita Baer, a resident on McHenry, stopped her and said she had a question. Ms. Wintzer immediately advised her not to speak about it and to contact the project planner with her question, which she did.

Director Erickson stated that the BOA would potentially be meeting on April 18, 2017 to hear another appeal that is restricted by the 45-day time period. Board Member Fuegi was unable to attend on April 18<sup>th</sup>. Board Members Gezelius, Wintzer and Franklin would attend.

REGULAR MEETING – Discussion, Public Hearing and Possible Action

**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')**  
**(Application PL-16-03358)**

Planner Makena Hawley reviewed the application for the variance request at 277 McHenry Avenue in the HRL District. The application contained three proposals; 1) A variance to reduce the rear-yard setback to 5'; 2) A variance to the allowable floor area of the accessory structure 700 square feet to 1,164 square feet; 3) A variance to the maximum 1,000 square feet size allowable for the accessory structure.

Planner Hawley reported that the Staff supported the variances for items 1 and 2.

Planner Hawley assumed the Board members had read the Staff report and she was available to answer questions.

Board Member Wintzer noted that the Staff report indicated that if the variances are granted, it would be placed on the deed to be a single-family dwelling. She understood that the kitchen would be removed and the common wall would be removed from the space to create a single-family home. Planner Hawley explained that there would need to be some restricting in order to keep it from being a duplex living situation.

Chair Gezelius asked how they would handle enforcement. Planner Hawley stated that a building permit could be allowed for the accessory apartment. However, prior to issuing a certificate of occupancy, the applicant would have to submit final approved plans changing the duplex into a single family dwelling and there would have to be a final inspection.

Planner Francisco Astorga explained that if approved, this action would be conditioned; and subsequent applications by the applicant such as a conditional use permit for the accessory use, the Historic District Design Review, and a plat amendment to remove one lot line bifurcating the property. Planner Astorga remarked that should the Board of Adjustment grant the variance, all the work would have to be completed in the main dwelling, changing the status from the existing duplex to a single family dwelling, before a certificate of occupancy could be issued. All the improvements would have to be verified by both the Building and Planning Departments, and the deed restriction would have to be recorded before they could sign off on occupancy of the accessory apartment.

Chair Gezelius asked if this was a legal duplex. Planner Astorga replied that duplex is not allowed in the zone; however, the applicant, Michael Kaplan had

received a letter from a former Planning Director showing that there was a legal duplex on the property. Planner Hawley noted that it was a legal duplex and an allowed use at the time it was built in that zone.

Mr. Kaplan explained that when he purchased the house after the Olympics, he was told by the Building Department that he needed to remove the kitchen. However, the former Planning Director, Patrick Putt, found a letter from 20 years earlier indicating that it was a legal duplex. Mr. Kaplan remarked that he was removing the duplex use per an agreement.

Chair Gezelius asked if parking situation was allowed to continue when the duplex was grandfathered. Mr. Kaplan stated that there were two horizontal parking spaces on each side of the duplex.

Chair Gezelius asked Planner Hawley to indicate on the map that lot line that would be removed. Planner Hawley remarked that the lot line between 12 and 11 needed to be removed in order to build on the lot. Once that lot line is removed, the road that bifurcates the property would be given to the City because it has been used as a public road for over ten years. Therefore, this plat amendment would memorialize that road as belonging to the City.

Assistant City Attorney McLean clarified that the road is already dedicated. Under State law, when a road has existed for over ten years as a public thoroughfare, it is dedicated for public use. Ms. McLean noted that McHenry has been used for much longer than ten years, which is why the road immediately goes to public dedication.

Chair Gezelius asked if this was considered to be one parcel by the County Assessor. Mr. Kaplan answered yes. Assistant City Attorney McLean stated that it is unusual to have a lot with two parts to it. What was anticipated is that one would be called the lot, and the eastern part would be a parcel. There would be a note on the plat saying that it cannot be separately developed, and it is appurtenant to the lot. For example, it cannot be sold separately.

Board Member Wintzer asked if it would preclude the existing structure being torn down and a much larger structure placed in that location. Ms. McLean replied that both parcels added together would equal the lot. However, this is a unique lot because of the constraints of the road going through it. There would be two front setbacks to meet, and if there was room on the lot, Mr. Kaplan could build a house with a footprint allowed by the LMC for both parts together. Ms. McLean believed Mr. Kaplan would be constrained by the physical layout of the lot. Ms. Wintzer clarified that she was asking because of the parking, but also whether granting the variance would allow for an addition to the existing accessory apartment because the new structure would be larger.

Planner Hawley stated that the Planning Department supported the request up to 1,000 square feet for the accessory apartment because the lot is constrained with the current development and there is not a lot of room to extend the accessory dwelling. The Staff found that to be a unique reason to allow up to 1,000 square feet. Planner Hawley noted that if Mr. Kaplan was to demo his existing house, he would be held to the constraints of the LMC in terms of footprint for the lot, as well as the additional setbacks coming from that road from the front and the rear. Board Member Wintzer clarified that in any case, the accessory apartment could never become larger in the future. Planner Hawley clarified that the Planning Department was suggesting a maximum of up to 1,000 square feet. Board Member Franklin point out that the Code currently calls out a maximum of 1,000 square feet. Planner Astorga remarked that the Code states one-third and a maximum of 1,000 square feet. It is not “or” but actually both. If Mr. Kaplan had a bigger house, the one-third could be larger than 1,000 square feet; but it would then be restricted to 1,000 square feet.

Board Member Franklin understood that the grandfathering applied to the duplex. She asked if it applied to not only the east-west lot, but also the north-south or the 12 and 11 lot. She noted that the house sits on both Lots 12 and 11, and part of the proposal is that they become one plat.

Assistant City Attorney McLean explained that if a lot line goes through an existing house, it is allowed to exist that way, but for any kind of renovation, the City requires that the lot line under the home needs to be removed in order to come into compliance. Board Member Franklin asked if part of the non-conforming use is the fact that it hovers on two lot lines. Ms. McLean answered no, because that would be corrected by requiring a plat amendment. She noted that it makes more sense for the applicant to know if he would be granted a variance before going through the other processes so he will know what he can build.

Board Member Wintzer had visited the site, but found it difficult to see the impact of the Dennis family homes and the Christiansen house.

Planner Astorga commented on the non-conforming status. He stated that the original request that Mr. Kaplan brought to the City was to keep his duplex and build an accessory apartment across the street. However, because the District does not allow a duplex, the Staff recognized his non-conforming status and said they would only entertain the idea of an accessory apartment if he was willing to decrease the density from the duplex to a single family dwelling. If the BOA grants the variance, Mr. Kaplan would lose the ability to have a duplex on that property. The trade-off would be to add the accessory unit across the road.

Chair Gezelius understood that in the HRL zone, which was adopted to decrease density and to encourage single family homes versus small multi-units on larger lots, and not to be nightly rentals, duplexes are not allowed in the HRL zone.

Planner Astorga replied that she was correct. He reiterated that the Planning Department was willing to support the variance for the one-third, if the applicant was willing to decrease the density on his property.

Chair Gezelius stated that the historical thinking on the density, particularly on site constrained parking parcels was that every unit adds vehicles, snow storage, etc. She pointed out that regardless of size, each bedroom equals two cars. Duplexes do not work on these constrained streets, which was the thinking behind prohibiting duplexes in the HRL zone.

Board Member Franklin commented on the language regarding the accessory building being one-third of the footprint of the primary structure, and asked if that reflects where the original structure could be remodeled at 3x the size of the accessory unit if the accessory unit is built at a certain square footage.

Planner Hawley stated that currently the existing structure is 2100 square feet, which means the applicant is allowed 700 square feet for the accessory apartment. If the additional square footage is not allowed it would remain at 700 square feet. If the applicant were to add on to the existing duplex, for example, to make it 3,000 square feet, the accessory apartment could be 1,000 square.

Board Member Franklin asked if the Board allowed the 1,000 square feet, whether the primary home could then be remodeled to 3,000 square feet. She clarified that she was asking whether the primary residence could gain more square footage based on the size of the accessory apartment. Planner Hawley replied that the accessory apartment square footage would not dictate the primary house. However, it would be dictated by the building footprint maximum for the lot, the setbacks, etc.

Board Member Franklin asked for the configuration of the current home in its duplex nature. Mr. Kaplan stated that he lives in the top two floors. The bottom floor is an apartment for ski area workers.

Board Member Wintzer thought Anita Baer made a good point in her. She did not believe a variance has ever been granted in that neighborhood for increased living space. Variances have been granted for garages. Ms. Wintzer believed that David White, the project architect, had done the design work for David and Patricia Constable and Dustin and Brady Christiansen. She recalled that the Christiansen's were only able to have a one-car garage and a parking space outside. Ms. Wintzer stated that in looking at the floor plan, she thought Mr. Kaplan could still have a one-car garage and a parking spot without having to push the house back 5' on to the back lot.

Planner Hawley stated that the parking requirements for an accessory apartment is one legal parking space per bedroom. A maximum of two bedrooms is allowed for the accessory apartment. Ms. Winter understood that the parking spaces

could be pad parking and not necessarily garages. Planner Hawley agreed that it only had to be legal parking spots.

David White remarked that the two-car garage designed fits into the hill, and it is not visible. It is totally underground. There was a 3' side yard setback and a 10' front yard setback. Mr. White noted that Mr. Kaplan had suggested reducing the rear yard setback. Board Member Wintzer wanted to know the benefit of reducing the rear yard setback. She understood that the advantage was to increase density. Mr. White replied that it was to increase the footprint; however, the resulting footprint is allowed with a variance. He acknowledged that if they maintained the 10' rear yard setback, the square footage would be reduced.

Planner Astorga referred to the comment about reducing the parking and having a one-pad driveway in front of the garage. He explained that Mr. Kaplan has an extra front yard setback because the road bifurcates the two parcels. Therefore, there is an additional restraint on the site of adding another 10' setback from that roadway. In order to have legal parking, the space must be 9' x 18'. Planner Astorga stated that even if Mr. Kaplan had a driveway in front of the garage, it would not meet the minimum requirement to be classified as a legal parking spot. Planner Astorga pointed out that it was not just the road, but also the added setbacks that go on either side of the road that the applicant has to meet, which pushes the house back towards the rear. Because of this unique condition on the site, the Planning Department was recommending that the Board of Adjustment grant the variance. Planner Astorga stated that Ms. Wintzer was correct in saying that no one else was granted a variance, because the variance is for a unique condition that only applies to a specific site in the neighborhood.

Board Member Wintzer clarified that she was not saying that people in the neighborhood have never applied for a variance. She recalled that another neighbor had a similar situation, and they applied for a variance and were denied. She believed that variances are typically denied for that neighborhood because of the substandard nature of the road.

Planner Astorga clarified that this was a unique condition because the property owner has less than half a lot on the other side of McHenry. He remarked that in some cases there were properties with a few square feet and those property owners were asked to dedicate that portion of the road. In this case it is a significant parcel. Planner Astorga noted that this application decreases the density from 2 units to 1-1/2 units, including the accessory apartment.

Chair Gezelius believed that a 1,000 square foot accessory unit exceeds the template of historical. In terms of parking, she could see four cars with two bedrooms. Chair Gezelius stated that asking for a larger than standard unit on such a sight constrained street with existing parking problems, is not that simple. when talking about reducing the 5' rear yard setback, no one knows what will



happen to the land on the other side with 5'. They know what it is currently zoned, but there are no guarantees that the zoning will not change. If it is re-zoned, people walking by could be 5' from the front door and that is not the best living situation. Chair Gezelius stated that asking for the setback exception and for the size exception was asking a lot for this street, even though it is a unique situation. She suggested that a 700 square foot unit that might only have two people with a two car garage would fit more with the parameters of what the City has been trying to do in the HRL zone. She found it to be a dilemma.

Planner Astorga believed that Planner Hawley had done a good job writing the alternatives in the application. He noted that there were three variances requested variances and the Planning Department supported two of the three. Planner Astorga explained that with any of the alternatives, the BOA could make findings and ask the Planning Department to come back in support of one, two, or all three of the requests; or deny all of them.

Planner Hawley noted that if an accessory apartment is built on a lot, neither the accessory apartment nor the main dwelling can be utilized for nightly rentals. It has to be longer than 30. Planner Hawley stated that if the 5' reduction is granted in the rear they would still have to comply with all other setback requirements. For example, a hot tub requires a 3' setback from the rear property line. A hot tub would not fit unless it is only 2 feet. She pointed out that very few things would fit in the 5' setback.

Michael Kaplan stated that this has been a nine-year ordeal. The process has been up and down and he thanked the Planning Department for their efforts, even though there have been disagreements on many of the issues. Mr. Kaplan respectfully requested that Board Member Wintzer recuse herself from voting because she lives on McHenry and it is a conflict of interest. He recognized that it was up to Ms. Wintzer to decide whether or not to recuse.

Mr. Kaplan stated that his original request was to create two lots of record that could be built on. If he had done that a number of issues would have been resolved. He plans to live up there full-time. In terms of compromises, he was willing to give up the property downstairs that not only pays part of his mortgage, but also provides employee housing which is needed in the community. Mr. Kaplan stated that he agreed to comply with the Building Department requirements and take out the oven and the plugs for an oven in order to remove the kitchen on the bottom floor. He also agreed to surrender the road to the City for the continuation of public use, even though he thought it was unfair because he pays the taxes on that land. Regarding the extra space, Mr. Kaplan noted that the he had agreed to and the Staff supported 1,000 square feet, but he was asking for 1,166 square feet. He pointed out that the extra was only 166 square feet, which would make the house more livable than a 1,000 square feet.

In response to the parking concerns, Mr. Kaplan stated that he lives alone. There is a two-car garage underneath and he would only be using one of those spots.

To address the rear yard setback issue, Mr. Kaplan passed around photos he had taken that afternoon. He reviewed a map showing the open space property line and the Junior Mining Claim. He noted that two of the neighboring houses cross over that Junior Mining Claim. He indicated where his house would sit and the 5' setback. His neighbors have exceeded the setback by five or more feet, but he was only going up to 5'.

Board Member Wintzer was certain that a certified survey has to be done before a house can be built. She asked if that was done. Planner Hawley showed the survey. Planner Astorga pointed out that the survey was only for 277 McHenry. It did not show the neighboring properties. Ms. Wintzer stated that when she built a recent home, the surveyor had to come back and certify it and the inspector had to verify it. She questioned how the other homes could extend over the property line, particularly since one of those houses were recently built. Board Member Wintzer clarified that Mr. Kaplan was talking about the Christiansen house.

David White stated that he was the architect on the Christiansen house. At first, the original historic house extended over the property line of the mining claim. Ms. Wintzer could understand that because historically surveys were not done. Mr. White remarked that when the old house was taken down and remodeled, they moved it north and west so it would adhere to the proper setbacks. He explained that the existing house was in such poor condition that they were allowed to take it down. Mr. White stated that for whatever reason, the original house sat over the rear property. When they were allowed to take down the house and rebuild it, they were allowed to move it and add an addition, as long as it adhered to the rear yard and side yard setbacks. That is why the Christiansen house is legal now.

Mr. Kaplan stated that his goal is to live there quietly in a small amount of space. He was only asking for 1,166 livable square feet.

Chair Gezelius understood that Mr. Kaplan was planning a dwelling unit to live in himself as an accessory unit, and to rent the main house. Mr. Kaplan replied that she was correct.

Chair Gezelius opened the public hearing.

There were no comments.

Chair Gezelius closed the public hearing.

Chair Gezelius noted that the Board must find that the requests complies with all of the five criteria outlined in the Staff report on each of the three variance requests.

Chair Gezelius called for Board comments on the variance request to reduce the setback in the rear from 10' to 5'.

Board Member Fuegi referred to a letter from Heinrich Deters that was provided in the Staff report. Planner Hawley explained that Mr. Deters was describing that on the recreation open space there are standards with the Wildland Fire Mitigation. For example, if a structure is up against the ROS zone and right on the property line, a specific setback from the structure must be maintained and specific wildland fire mitigation must be done, such as cutting down trees. Mr. Heinrich was saying that trees would be lost and money would be spent. The closer the structure is to the property line, the more they have to mitigate. Board Member Fuegi understood that the houses on either side were also over the boundary, and he believed that they would have to mitigate for those structures in a similar fashion.

Board Member Franklin referred to a drawing on page 58 of the Staff report. She clarified that the front setback said 10'. Mr. Kaplan answered yes. Ms. Franklin asked if the drawing on page 58 was showing a staggered garage door. Mr. Kaplan answered yes. Ms. Franklin understood that double garage doors were not allowed in the Code, and she asked if side by side garage doors were prohibited as well. David White replied that garage doors are allowed side by side, but aesthetically he tried break it up rather than having one flat wall. Mr. White stated that the break could be reduced if they preferred, but it was currently designed at 5'.

There was no further discussion on the setback variance.

Chair Gezelius called for discussion on the variance for the accessory apartment size. She asked if there was consensus that it was acceptable to have an accessory unit under the limits of the Code. Planner Astorga stated that an accessory apartment is subject to a conditional use permit, which the BOA does not review. He explained that the variance the applicant was seeking would be to allow more than one-third of the size of the primary dwelling. Whether or not he could actually have the accessory apartment would be up to the Planning Commission. Planner Astorga explained that the role of the BOA on this matter is to determine whether or not to deviate from the Code and grant the variance request to exceed the one-third rule.

Board Member Fuegi questioned why the BOA would be considering a variance without knowing if the accessory structure would be approved by the Planning Commission. Assistant City Attorney McLean understood the concern. However, the applicant needed to come in for the variance first, because if he

wants an accessory apartment that is larger than 700 square feet, he would not want to go through the Planning Commission process and then find out afterwards that the BOA would not grant the variance. Ms. McLean stated the standards are higher for a variance, and it is normally harder to obtain a variance than a conditional use permit. Planner Astorga noted that the Planning Commission is not allowed to look at unique conditions.

Chair Gezelius called for comments on the appropriate size for a variance for the accessory apartment on this specific hardship application. She noted that the Staff recommendation was to find for a 1,000 square foot size. The applicant was asking for 1164 square feet.

Board Member Fuegi asked Mr. Kaplan how many bedrooms and bathrooms would be in the accessory unit. Mr. Kaplan replied that it would be two bedrooms and two bathrooms.

Director Erickson clarified that Variance Request #2 was only for the application of the 1,000 square feet. Variance Request #3 requests the additional 164 square feet. The question for Variance #2 is whether there are special conditions on this site that create a hardship that would not allow fair application of the square footage, which is one-third of the square footage of the primary dwelling. Variance #3 addresses the ability to allow larger than the 1,000 square foot restriction because of the special circumstances on the site.

Planner Hawley clarified that the Staff was recommending approval for the 1,000 square feet. Planner Astorga gave a brief presentation to explain the reason for their recommendation.

Board Member Wintzer asked if the Staff looks at the purpose statement in making their decisions. She wanted to know if they considered the road conditions, the dead end, and the tight constraints of the neighborhood. Ms. Wintzer asked if those factors were taken into consideration, or whether the Staff only looks at the rules. Planner Astorga explained the Staff is required to look at State and Local variance criteria regarding unique conditions. They also look at other factors and the regulations and the purpose of such regulations, but the findings, whether for granting the variance or denying the variance, must be tied to Criteria 1 through 5 and nothing else. Planner Astorga stated that the Staff was not able to find that connection for the third variance request to exceed 1,000 square feet. Even without the road, Mr. Kaplan would still be limited to 1,000 square feet.

In response to Mr. Kaplan's comment about recusal, Board Member Wintzer stated that she genuinely believed she could be impartial; otherwise she would have recused herself. She believed she had valuable history and understanding of the road. Ms. Wintzer remarked that she has a one bedroom, one bath, 600 square foot house in Hurricane. She knows there are constraints and she has

had to be creative, but it is possible to enjoy the house. Based on her knowledge of the traffic and the road, and the health and safety hazards of the road, she was finding it difficult to grant Variance #2.

Chair Gezelius asked Ms. Wintzer about Variance #1. Board Member Wintzer stated that it was a matter of fairness. She thinks about everyone who has had to comply with their rear yard setback, and those who had to setback more because of the road situation. She did not believe that factored into her impartiality, but she has seen many people denied for increased square footage.

Mr. Kaplan commented on the concerns raised about snowplows and parking. He pointed out that the two cars that currently park along McHenry Avenue would be parked in a garage, which would help alleviate parking and plow issues. Ms. Wintzer assumed that the garage was for the new cars coming to the dwelling; not the two existing cars. Mr. Kaplan remarked that it would only be two cars because the number of people would not change. Instead of parking along McHenry Avenue, they would be parked underground underneath the house, which will improve the parking situation. Ms. Wintzer wanted to know where the renters would park. Mr. Kaplan replied that they would park where he currently parks on the other side of the street.

Director Erickson referred the Board to Variance #1, and read Criteria 1 which stated that literal enforcement of the 10' setback would cause an unreasonable hardship for the applicant that is not necessary to carry out the LMC. He asked if the Board found that to be a true statement.

Chair Gezelius believed it was a unique situation that created a hardship. Director Erickson replied that her comment related to Criteria 2, which was special circumstances attached to the property that do not generally apply to other properties in the same zone.

Director Erickson believed those were the two crux issues on the question of setback. In both cases the Staff believed there was an unreasonable hardship and that there were special circumstances attached to the property. If the Board was comfortable with the Staff recommendation, they could move to the next variance.

Board Member Franklin stated that for Criteria 1, she found that it does not comply because she did not see it as an unreasonable hardship. Ms. Franklin felt it complied with all the other categories; however, they were asked to find compliance with all five criteria.

Board Member Wintzer stated that the three criteria she was concerned about was a) reducing the density for substandard street areas; b) provide an area of lower density residential use within this zone of Old Town. She could go either

way on c). Ms. Wintzer clarified that she was talking about where the variances do not meet the criteria.

Ms. Franklin clarified that her statement only related to Variance #1. She was not referring to all three variances. Chair Gezelius noted that they were only talking about Variance #1 at this time. Ms. Wintzer explained that she did not believe that a smaller setback would reduce the density. Director Erickson pointed out that density was a function of the LMC, and related to Criteria 1.

Board Member Fuegi thought the first one was questionable. He agreed with the Staff recommendation on the other two.

Chair Gezelius clarified that three Board members were not comfortable with Variance #1.

Chair Gezelius called for comments on Variance #2, which was the accessory apartment size regarding one-third and up to 1,000 square feet.

Board Member Franklin agreed that there was compliance with all five criteria on Variance #2. Board Members Wintzer and Fuegi concurred.

Chair Gezelius called for comments on Variance #3, the accessory apartment size, and the request to exceed the maximum 1,000 square feet to 1164 square feet. The Staff that this variance did not comply with the five criteria.

Board Member Franklin concurred with the Staff that Variance #3 did not comply with all five criteria. Board Members Wintzer and Fuegi concurred.

Chair Gezelius stated that there was consensus regarding Variance #2 and #3; but there was not consensus on Variance #1 regarding the reduced rear setback. Chair Gezelius asked if the Board should continue Variance #1 or call for a motion.

Assistant City Attorney stated that under the Board of Adjustment rules, three members must vote to pass a motion; otherwise it does not go forward. Director Erickson asked if there were three Board members willing to vote one way or another on Variance #1.

Planner Astorga understood from their comments that the BOA found consensus regarding denying Variance #1, approving Variance #2, and denying Variance #3. He understood that Ms. Gezelius was suggesting a continuance because there were not written findings for the denial of Variance #1. Assistant City Attorney recommended that if there was consensus to Variance #1, they could take a break and allow the Staff to amend the facts for denial of the setback, or the Board could amend the facts with help from Staff.

Board Member Franklin asked if they could reopen the discussion on Variance #1. She recalled other projects changing the setbacks where the Board worked was able to come to an agreement on a different setback where they felt it did comply. Chair Gezelius pointed out that the setback is 10 feet without a variance, and the request is for a 5' foot reduction. She did not understand Ms. Franklin's suggestion. Board Member Franklin stated that in the past the Board has granted a setback exception of a different number, for example, 7' instead of the requested 5'. Assistant City Attorney McLean stated that if three Board members agree that another number is more appropriate than 5' for a reduced setback, they could change the variance. Chair Gezelius pointed out that changing the variance would require a redesign on the part of the applicant, but that would be on the applicant and not the BOA. Board Member Wintzer believed that in the case Ms. Franklin was recalling, the applicant had proposed the possibility of a different setback from what was originally requested. She did not think the Board had made that suggestion.

Mr. Gezelius asked if the applicant would consider another number besides the 5' rear yard setback reduction, and if so, whether he would prefer that the Board continue Variance #1 to give them additional time to rework the plan.

David White stated that at the present time, the garage itself is set back from the 10' front yard setback. If they brought it forward, they could work with a 7' rear yard setback. Mr. White explained that his original intent was to avoid two-story high flat walls. He acknowledged that some redesign would be required in order to make a 7' setback work.

Director Erickson referred to the Staff's determination on page 41 of the Staff report. He noted that currently the Staff finds that literal enforcement of the required 10' rear yard setback is a hardship, and not necessary to carry out the general purposes of the LMC. The thinking behind that is that the 5' rear yard setback would not negatively affect the trails and open space abutting the property line. Director Erickson pointed out that the Open Space and Trails Manager had a different opinion, and believes that the 5' setback would negatively affect open space and trails. Director Erickson stated that the Board could make the finding that if putting the building too close to the wildland interface requires additional work to cut more trees, then it would have a negative effect. He remarked that the next question would be whether the 5' rear yard setback only helpful on this lot, or does it apply throughout the rest of the neighborhood. Director Erickson believed that in this particular case, it was argued that the 10' rear yard has been applied consistently through the neighborhood; and not the 5' variance that was being requested in this case.

Chair Gezelius clarified that at this time there is no other lot exactly like the subject lot. Director Erickson agreed, which is the balance point. He believed the Staff made the case that there are a number of misshapen and odd lots, and road right-of-ways, and other things in the neighborhood. Director Erickson

remarked that the discussion point is whether the 5' setback is unique specifically to this lot; or was it a matter of the applicant trying to do the right thing by complying with the Historic District Guidelines with respect to garage doors.

Planner Astorga noted that Planner Hawley had highlighted the Findings of Fact regarding the 5' setback. He thought they could pinpoint the Finding that addresses Criteria 1, the criteria the Board had issues with, which specifically says that literal enforcement of the LMC would cause the hardship. That Finding could be changed per the discussion this evening, and the Board could make a motion consistent with their discussion, unless they were leaning towards proposing another reduced setback. Planner Astorga did not believe the other highlighted Findings applied to the literal enforcement of the Code.

Assistant City Attorney McLean asked if the Board was suggesting that Variance #1 be denied completely, or that it be reduced to a certain number of feet. Board Member Franklin clarified that she raised the idea of a reduced number because she thought it was an option. If it was not an option, she would withdraw her suggestion. Ms. McLean stated that Ms. Franklin could make that motion and see if it was supported by the other Board members. Ms. Franklin remarked that with the compliance of less than 1,166 square feet, once they move closer to under 1,000 square feet, the math will work towards bringing it away from the 5' setback and closer to having a smaller structure. Ms. Franklin referred to Mr. White's comment about getting closer to complying with Variance #1 by the compliance of Variance #2. She thought it might be worth continuing to see if there is compliance with the 10' setback with the new square footage as approved.

David White clarified that Board Member Franklin was referring to the maximum of 1,000 square feet. Planner Astorga understood that Ms. Franklin was saying that, but the Board was saying that a 5' variance was excessive, and they would like to give the architect the opportunity to come up with a number between 5' and 10' that would most likely be consistent with the 1,000 square foot restriction.

Chair Gezelius stated that she was sympathetic to Mr. White's point that there is a concerted effort in the Historic District to avoid the "garage barrage". Having some variation on the front façade would affect more people than a few feet of variance in the back of this property that few people see. She believed it was worth some trade-off for a reduction in the setback to get a more attractive entry in the front.

Board Member Fuegi noted that the applicant would be losing approximately 15% of the 1166 square feet requested. He asked Mr. White if that 15% would be enough to stay within the setbacks. Mr. White replied that it would be close, but he could work with it. Mr. White believed they could maintain the two-car garage; however, currently the mechanical, storage, and circulation is contained within the volume of the garage rather than outside. Mr. Fuegi believed that if



they were talking about 2' of setback, it was more liking splitting hairs and he was unsure if that was necessary. He thought that reducing their square footage by 15% or 166 square feet would take care of the 5' setback.

Board Member Franklin understood that at 30 feet wide, she believed that a couple of feet would eliminate having to request Variance #1.

Planner Hawley pulled up the floor plan. Planner Astorga wanted to avoid Mr. Kaplan having to come back with another variance request for not meeting the interior spaces for parking. He noted that 9' x 18' was only the exterior. The interior was 11' x 20'. Planner Astorga reviewed the plans and indicated 5' off the back. He did not see the measurements on the garages, but he assumed it was 20' long. Mr. White stated that the garage was dimensional crosswise. He indicated the depth of the garage. Planner Astorga pointed out that if Mr. White kept the same shape and pushed it forward it would still meet the 10' setback, but it would only give two or three feet to work with on the corner. Planner Astorga was concerned that if it was 20', Mr. Kaplan would have to come back to the Board of Adjustment for a variance to build the garage he needs.

Chair Gezelius believed it was inappropriate to ask Mr. White to redraw his plans while the Board gives input. She thought it was more appropriate to continue this item and give the applicant and his architect the opportunity to look at a redesign with a lesser rear yard setback variance; and understanding that 1,000 square feet was the maximum the Board would approve for the accessory unit.

Mr. White pointed out that the dash line was the limits of the house above; and those lines hit the setback. He stated that conceivably he could move the garage slightly. However, to increase the rear yard setback, the actual house would have to become smaller. Mr. White noted that currently the house was 1164 square feet, and he understood that they would be limited to 1,000 square feet. Planner Astorga reviewed the elevation and pointed out that the garage was 21'8". Therefore, the garage could be decreased in size and pushed forward. Planner Astorga remarked that Mr. White was indicating that he would have a difficult time meeting the Design Guidelines in terms of the required articulation and variation. That was the reason why he designed the overhang on top of the garage. Planner Astorga thought it was appropriate to continue this to another meeting, at which time Mr. White could provide sketches of what might work within the specific constraints of the site.

Planner Astorga understood that the Board was not comfortable with the 5' setback as recommended by the Staff.

Assistant City Attorney McLean remarked that since there was Board consensus on two of the three variance requests, she suggested that they vote on those two based on the findings in the Staff report.

MOTION: Board Member Franklin moved to CONTINUE requested Variance #1 with the direction to the applicant and the Staff to rework the setback under the basic 1,000 square foot limit. Board Member Fuegi seconded the motion.

Planner Astorga requested that the Board continue to a date certain so the Staff would not have to re-notice the item. After some discussion, the decision was made to continue to the April 18<sup>th</sup> meeting.

Board Member Franklin amended her motion to Continue Variance #1 to April 18, 2017. Board Member Fuegi accepted the amendment to the motion.

VOTE: The motion passed unanimously.

MOTION: Board Member Franklin moved to APPROVE Variance #2 in accordance with the Findings of Fact, Conclusions of Law, Order and Conditions of Approval found in the Staff report relating to Variance #2. Board Member Wintzer seconded the motion.

VOTE: The motion passed unanimously.

MOTION: Board Member Franklin moved to DENY Variance #3 subject to the Findings of Fact and Conclusions of Law and the Order found in the Staff report relating to Variance #3. Board Member Fuegi seconded the motion.

VOTE: The motion passed unanimously.

Planner Astorga wanted to make sure that the applicant understood that the reason for continuing Variance #1 was to avoid the situation of having the Board grant a variance that would create another variance request. He appreciated the applicant's patience and the Board's creativity in order to move this forward. It is important to get it right, and he believed this was the appropriate course of action.

Ms. Franklin stated that when she mentioned the garages she did not want the creativity in their discussion to be construed as any type of direction. It was merely an issue she raised in terms of how to make it work for the applicant and for the community.

#### Findings of Fact – 277 McHenry Avenue

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 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.
5. 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.
6. The subject site contains a total of 4,381 square feet minus the road.
7. The western portion of 277 McHenry is a total of 2,557 sq. ft.
8. The eastern portion of 277 McHenry is a total of 1,824 sq. ft.
9. The road equates to 452 sq. ft.
10. 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.
11. The minimum lot size in the HRL is 3,750 sf.
12. The accessory apartment design proposes 823.2 sf. footprint.
13. The design includes construction of an accessory apartment with a two-car garage at the basement-level with living space and decks above it.
14. In the HRL zone, an accessory apartment is a Conditional Use.
15. The Duplex was built in 1973 over two property lines. No building permits could be located.
16. Side yard setbacks for the lot are 3 feet minimum and 6 feet combined. The proposal meets the side yard setback requirements.
17. Parking requirements for a Single Family home is 2 spaces per dwelling unit.
18. Parking requirements for a Duplex dwelling is 2 spaces per dwelling unit.
19. Parking requirements for an accessory apartment are 1 space per bedroom.
20. The accessory apartment is proposing 2 bedrooms and 2 parking spots.
21. 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.
22. According to City Records there are no other Accessory Apartments permitted by the City within 300' of the property.
23. The depth of the east portion of the lot ranges from 42 feet to 55 feet.
24. 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.
25. 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.
26. The alleged hardship consists of an existing road, McHenry, which bifurcates the subject site.
27. The location of the McHenry Road, splitting the subject site in two, does not allow any construction in that same location.

28. The alleged hardship is not self-imposed or economic as the site has had a "road running through it".
29. 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.
30. Essential enjoyment of the property is affected by the location of McHenry Avenue.
31. 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.
32. 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.
33. There is no relationship between the hardship of the site, the bifurcating road, and the regulation city wide consisting of 1,000 sf.
34. 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.
35. The proposed variance for additional square footage above 1,000 square feet 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
36. 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.
37. Legal notice was published in the Park Record on March 4, 2017, according to requirements of the Code.
38. No public input was received at the time of writing this report.
39. 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.
40. 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 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 15-4-7 (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.
2. 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 – 277 McHenry Avenue

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.

Chair Gezelius adjourned the meeting at 6:42 p.m.

Approved by \_\_\_\_\_  
Ruth Gezelius, Chair  
Board of Adjustment



## Board of Adjustment Staff Report

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

### Summary Recommendations

Staff recommends that the Board of Adjustment review, conduct a public hearing, and grant the requested variance to Land Management Code Section 15-2.1-3 (E) Rear Yard Setbacks, 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 structure on the same lot. Due to McHenry Avenue bisecting the lot, the lot area for an Accessory Apartment is reduced. The applicant is requesting the following:

*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 an accessory apartment/detached garage on the eastern portion of the Lot.*

### 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 below. 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, within Block 60 of the Park City Survey. An existing non-historic and non-conforming duplex home is built over the common lot lines. Paved McHenry Avenue bisects these lots creating a western portion and an eastern portion of the same lot.

Existing on the lot lays a duplex built over lot lines. The use of the duplex was built when it was legal within the code therefore has been a legal non-conforming use. The applicant’s original request was to keep both the duplex and build an accessory apartment however the Planning Department could not give a positive recommendation on this request. Due to the increase in units that an accessory apartment would create and the current illegal duplex use in the zone, the Planning Department agreed to only support the addition of an accessory apartment if the duplex use was given up and the existing structure becomes a single family dwelling. If the duplex use is negated with the approval of an accessory apartment then the amount of units on the lot will stay the same.

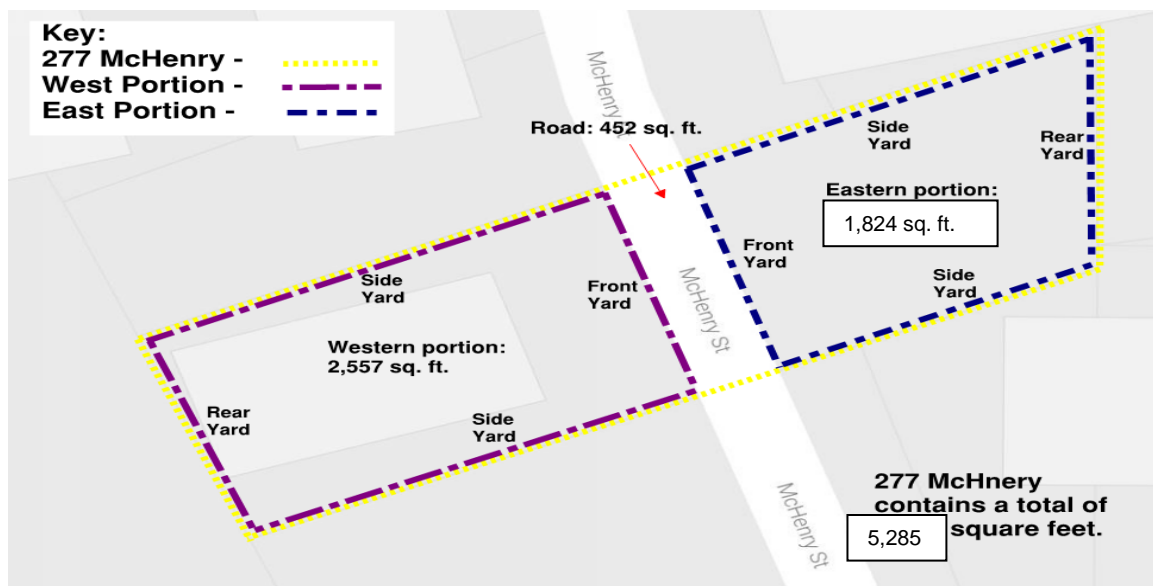
The existing property contains a total of 5,285 square feet (this includes the road as it has not been formally dedicated yet but will be with the approval of a plat amendment)

The western portion 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 to occur 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 entire ownership and remove interior lot lines and formally dedicate ROW for McHenry Avenue, a historic district design review (HDDR) for construction within the historic district, a conditional use permit (CUP) for an accessory apartment, and a steep slope conditional use permit (CUP) for construction over steep slopes. The Planning Commission will review the plat amendment, steep slope CUP and the CUP for the accessory apartment. The Planning Staff will review the HDDR.

On March 21, 2017, the BOA held a public hearing and reviewed three (3) variances including the following:



- 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. The Board voted unanimously to continue this Variance request to a future date. This is the subject variance discussed in this report.
  - a. The variance for a 1,000 square foot limit was granted with a unanimous vote. Due to the change in square footage from the accessory apartments original proposal, staff and the board found that a continuance would allow the applicant to rework the setback under the basic 1,000 square foot limit. Things to keep in mind for the architect were the interior garage dimension requirements and design guideline regulations for articulation and variation.
- 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. The Board voted unanimously to grant this Variance to allow the accessory apartment to include no more than 1,000 square feet.
- 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. The Board voted unanimously to deny this Variance. The denial of this Variance request would not allow the applicant to build the Accessory apartment above the maximum square footage of 1,000 square feet (Please see Exhibit I for March 21, 2017 BOA minutes).

#### Plat Amendment –

277 McHenry is made up of Lot 12 and North ½ of Lot 11 within Block 60 of the Park City Survey with the existing house built over the lot lines. A plat amendment is required prior to 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(1)(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. Based on the lot size, excluding the road, of 4,381 square feet, the applicant would be entitled to a max building footprint of 1,712.2 square feet.

#### 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.

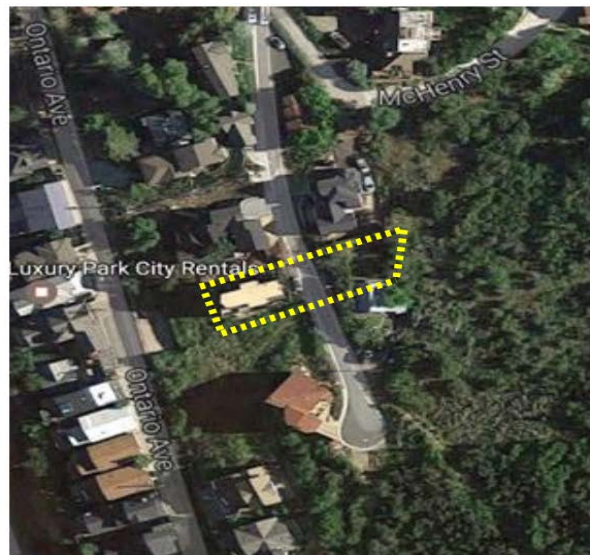
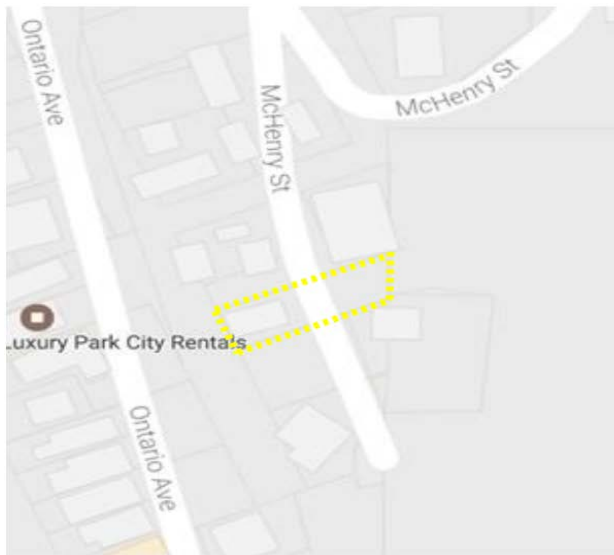
The applicant requests the variances to allow an accessory apartment to be built on the north/east half of the Lots where no development currently exists. The design includes construction of an accessory apartment with a two-car garage at the basement-level with living

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. (Please refer to parking analysis below).



**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 60 within the Park City Survey. The site is currently occupied by a non-historic non-conforming duplex 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.

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 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 via the submitted Variance request that 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.

**Summary**

The Planning Department reviewed the constraints of the lot and the existing structure and finds support of the rear yard setback to allow a five (5) foot reduction.

Due to the legal 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 only supports 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 recommends placing a deed restriction on the property that indicates that the City approved use would be limited to a single-family dwelling.

Approving the accessory apartment to be built addresses the parking situation that the existing duplex 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, then required parking for both uses will be met.

### **LMC Review Criteria for a Variance**

In order to grant the requested variance 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– 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.

The 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. Furthermore, the bifurcating road requires that two additional front yard setbacks be added to the side in the middle of the site, which further limits additional area from being able to build improvements thereon, which further pushes future structures toward the two rear property lines. 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 and setbacks need to be added to the site further

limiting construction.

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 adjacent to the road. 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. It is not a common condition for other properties in the HRL Zoning District.

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 allows 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.

### **Future Process**

Approval or denial of the variance` 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.

### **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 April 26, 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 April 29, 2017, according to requirements of the Code.

On March 21, 2017, two of the three variance requests were voted on and the final variance request for a reduced rear yard setback was continued to April 18, 2017. The April 18<sup>th</sup> meeting was canceled and notice was published in the paper on April 1, 2017. The reduced rear yard setback variance request was moved to May 16, 2017.

### **Public Input**

Public comment has been provided and is available under Exhibit J.

### **Alternatives**

- The Board of Adjustment may grant the 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 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 in the rear yard setback could take place. Should the BOA not grant a variance to reduce the rear yard setback from 10 feet to 5 feet per the applicant's request, the applicant will not be permitted to construct an accessory apartment as proposed and would need to reduce the building envelope to meet the required setbacks. 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 requested variance to Land Management Code Section 15-2.1-3 (E) Rear Yard Setbacks, 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 (HR-L) 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. 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.
6. The subject site contains a total of 4,381 square feet minus the road.
7. The western portion of 277 McHenry is a total of 2,557 sq. ft.
8. The eastern portion of 277 McHenry is a total of 1,824 sq. ft.
9. The road equates to 452 sq. ft.
10. 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.
11. The minimum lot size in the HRL is 3,750 sf.
12. The accessory apartment design proposes 823.2 sf footprint.
13. The design includes construction of an accessory apartment with a two-car garage at the basement-level with living space and decks above it.
14. In the HRL zone, an accessory apartment is a Conditional Use.
15. The Duplex was built in 1973 over two property lines. No building permits could be located.
16. 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.
17. Side yard setbacks for the lot are 3 feet minimum and 6 feet combined. The proposal meets the side yard setback requirements.
18. Parking requirements for a Single Family home is 2 spaces per dwelling unit.
19. Parking requirements for a Duplex dwelling is 2 spaces per dwelling unit.
20. Parking requirements for an accessory apartment are 1 space per bedroom.
21. The accessory apartment is proposing 2 bedrooms and 2 parking spots.
22. 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.
23. According to City Records there are no other Accessory Apartments permitted by the City within 300' of the property.
24. The depth of the east portion of the lot ranges from 42 feet to 55 feet. 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.
25. 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.
26. 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 comply with required parking for the uses. If the duplex remains, the parking requirements are not met and there is more density than permitted for the lot.
27. 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.
28. 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.
29. The hardship consists of an existing road, McHenry, which bifurcates the subject site.
  30. The location of the McHenry Road, splitting the subject site in two, does not allow any construction in that same location.
  31. Because a road is located in the middle of the lot, which also adds a corresponding front yard setback area, 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.
  32. The alleged hardship is not self-imposed or economic as the site has had a "road running through it".
  33. There are circumstances peculiar to this property that are unique and are not conditions that are general to the neighborhood requiring additional setbacks.
  34. 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.
  35. Essential enjoyment of the property is affected by the location of McHenry Avenue.
  36. 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.
  37. 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.
  38. All other LMC related site and lot criteria, including the other setbacks, height, footprint, parking, design, uses, etc. will be met.
  39. 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.
  40. The Accessory apartment will have a max gross floor area of 1,000 square feet.
  41. 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.
  42. Legal notice was published in the Park Record on March 4, 2017, according to requirements of the Code.
  43. Public comment has been provided and is available under Exhibit J.
  44. If the variance is not approved the property would remain as is and no construction of the proposed accessory apartment could take place within the rear yard setbacks. 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 building footprint to fit inside the required setbacks. 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.
  45. All other LMC related site and lot criteria, including the other setbacks, height, footprint, parking, design, uses, etc. will be met.

### **Conclusion of Law**

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.

### **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.**

### **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 Building Permit approval 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 (Plans will need to be changed to reflect the correct max amount of square footage allowed)

Exhibit F – Proposed plans (Plans will need to be changed to reflect the correct max amount of square footage allowed)

Exhibit G – Current photographs of the site

Exhibit H – Development Review Committee Comments Regarding Open Space

Exhibit I – Board of Adjustment Minutes from March 21, 2017

Exhibit J – Public Comment provided by May 12, 2017

# 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 (1/3<sup>rd</sup> 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

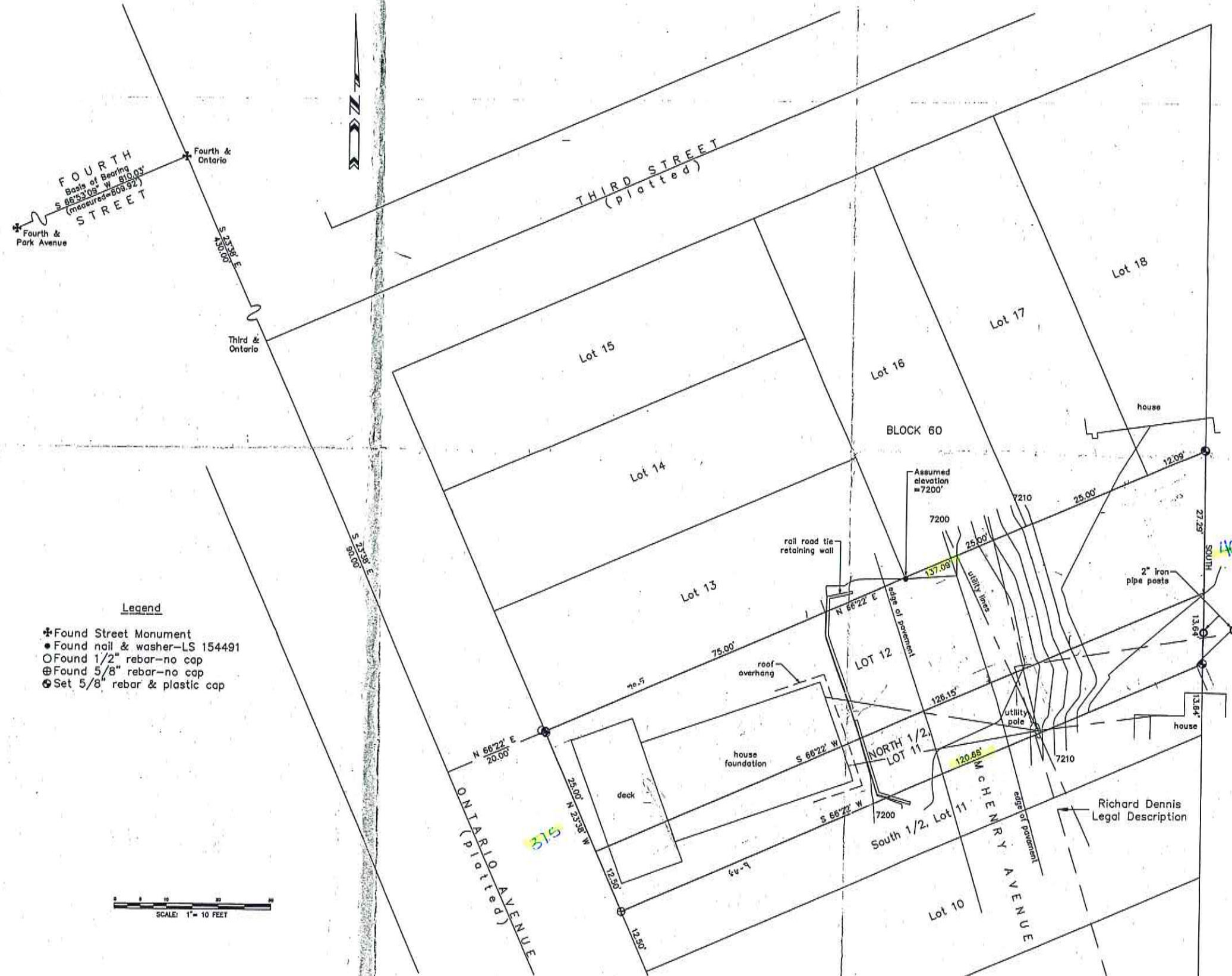
## Exhibit B – Aerial View of lot





**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 Sheet #3 of the Park City Monument Control Map by Bush & Gudgeon, Inc., on file and of record in the office of the Summit County Recorder.
4. Date of survey: May 31, 2002.
5. Property corners found as shown.
6. Located in the Southeast 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-406 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. Gailey, a Registered Land Surveyor as prescribed by the laws of the State of Utah and holding License No. 359005, do hereby certify that I have supervised a survey of the hereon described property and that this plat is a true representation of said survey.

COPY



11/29/05  
Date

J.D. Gailey

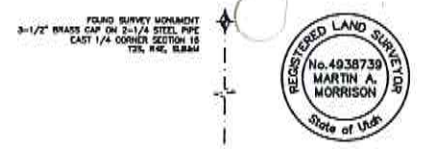
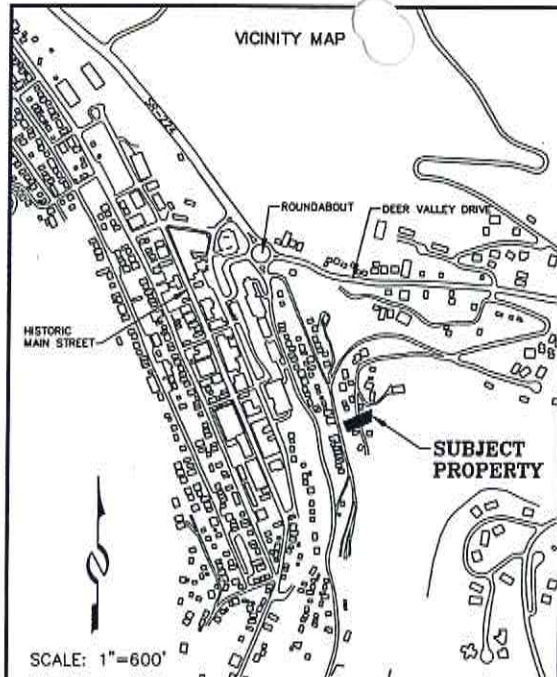
- Legend
- ✦ Found Street Monument
  - Found nail & washer—LS 154491
  - Found 1/2" rebar—no cap
  - ⊕ Found 5/8" rebar—no cap
  - ⊗ Set 5/8" rebar & plastic cap



Alpine Survey, Inc.  
19 Prospector Drive  
Park City, Utah 84060  
(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. 4938739, 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 MATH 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 MATH TRUST dated January 8, 2015

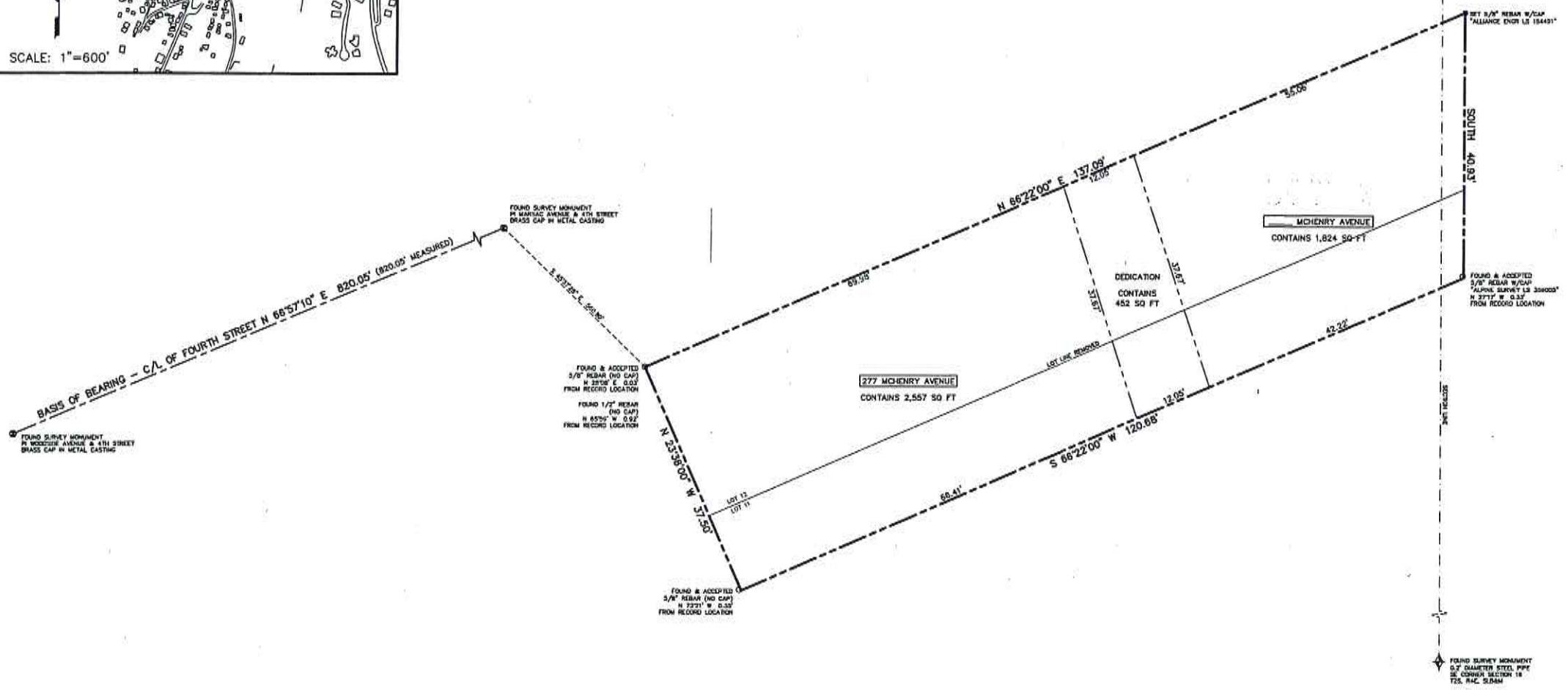
### ACKNOWLEDGMENT

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 MATH 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: \_\_\_\_\_

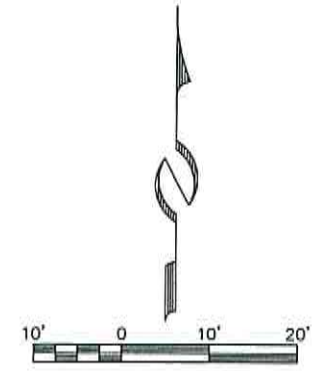
**NOTE**  
This subdivision is subject to the Conditions of Approval in Ordinance 16-\_\_\_\_\_



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) 649-9487 Board of Adjustment Packet May 16, 2017 323 Main Street P.O. Box 2664 Park City, Utah 84302-2664	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. _____ Page 39 FEE _____ RECORDER _____
	4/5/16 JOB NO.: 4-3-16 FILE: X:\ParkCitySurvey\dwg\arv\plat2016\040316.dwg						







# Exhibit E – Proposed Site Plan

(Plans will need to be changed to reflect the correct max amount of square footage allowed)

## NOTES

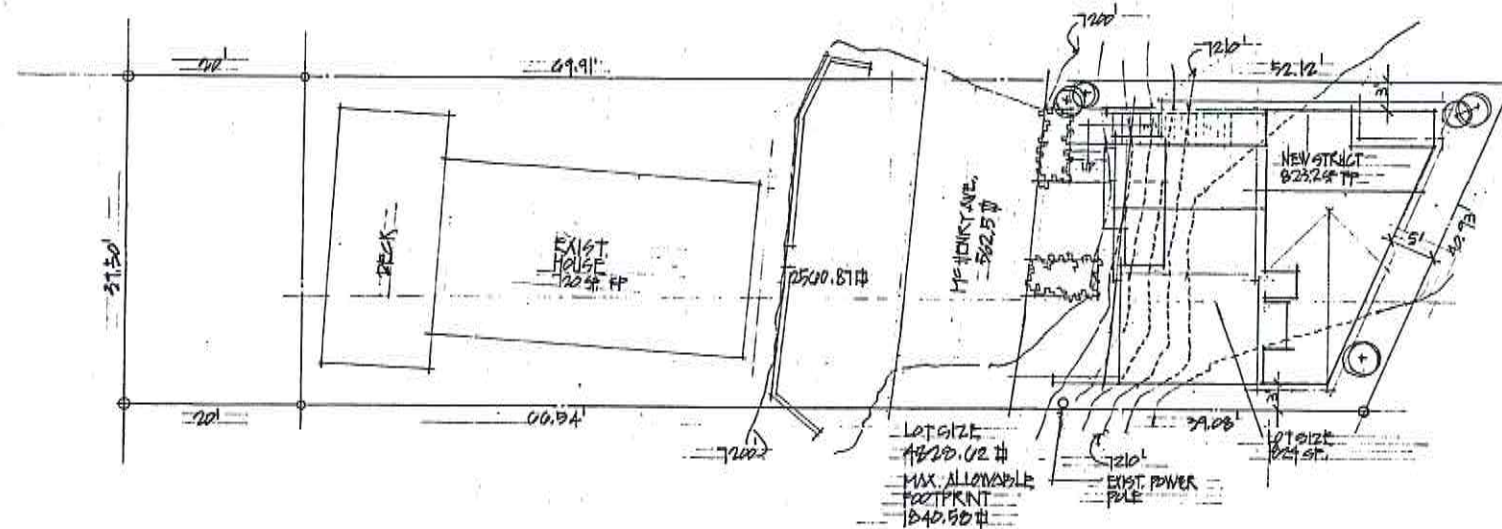
1. ALL LANDSCAPE IRRIGATION SHALL BE TRIP TYPE IRRIGATION
2. ALL DISTURBED AREAS WITHIN THE L.P.D. SHALL BE GRADED & RE-SEEDED W/ DROUGHT TOLERANT NATURAL GRASSES & WILDFLOWERS.

## LANDSCAPE LEGEND

-  ASPEN CLUMP (8'-0" MIN. HT.)
-  EVERGREEN  
(COLORADO BLUE SPRUCE - 6'-0" 8'-0" HT.)
-  SHRUBS (DROUGHT TOLERANT)
-  OAK BRUSH (EXIST.)

## GENERAL NOTES

1. Comply with IRC Chapter 4 for excavations, and grading. Pay special attention to tall cuts close to property lines. CUT SLOPES AND GRADE SHALL BE STEEPER THAN 2:1 REQUIRE SOILS REPORTS ADDRESSING STABILITY. General Contractor shall arrange a meeting with Plan Checker, the General Contractor and the Excavator for this project prior to any permits being issued.
2. Tubs and showers with tiled walls require a Portland Cement application, fibered-cement or glass mat gypsum: 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 predominant R-values of insulation installed in or on ceiling/roof, 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 service 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 IBC, 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 receptacles shall be tamper resistant.
7. All plumbing installations shall comply with the 2012 IRC.
8. All mechanical installations shall comply with the 2012 IRC and IFGC.
9. Showers shall be finished to a min. 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 the drainage 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 ft. 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 R11 insulation.



NEW SITE PLAN

LANDSCAPE PLAN

REVISIONS BY

DAVID G. WHITE, ARCHITECT

P.O. BOX 13113 - 2703 ESTATES DRIVE  
PARK CITY, UTAH 84060  
(435) 649-8379 FAX: (435) 655-8045  
Email: dgwhite@msmson.com

NEW SITE & LANDSCAPE PLAN

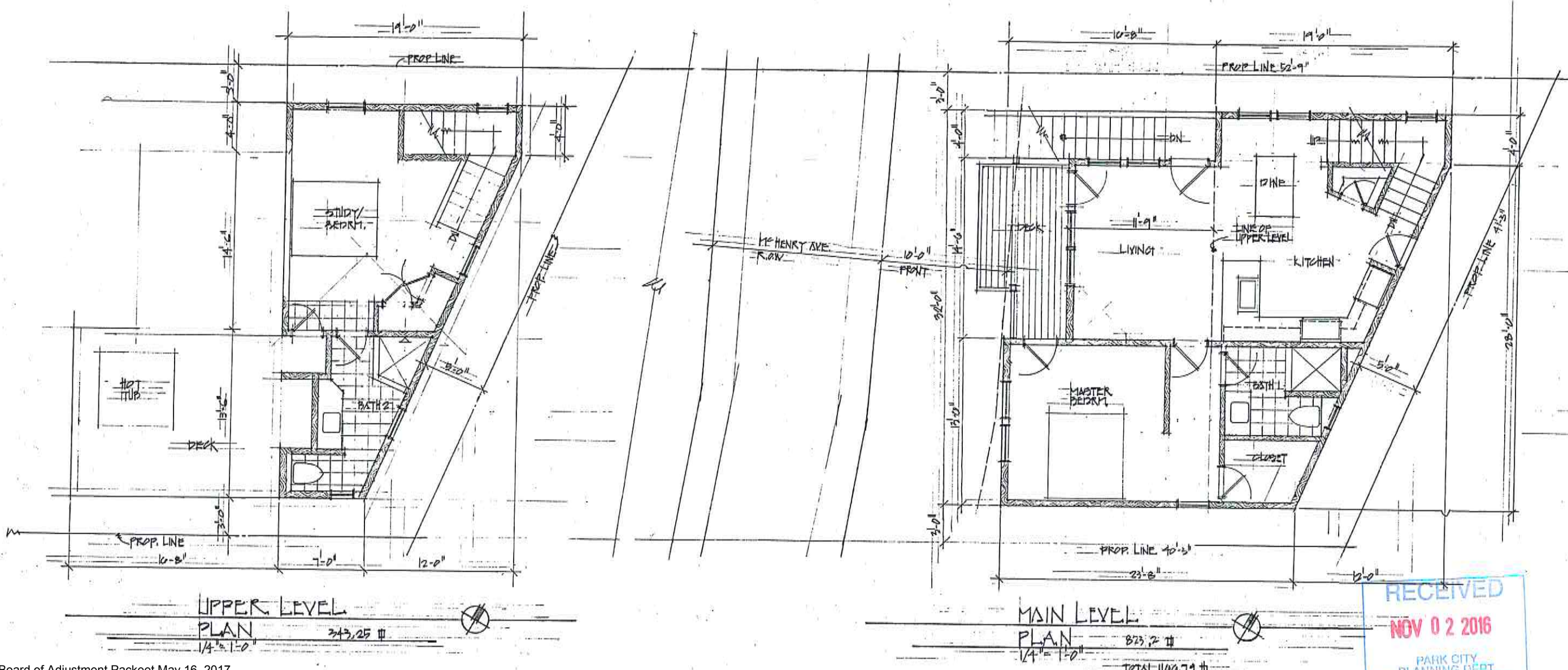
273 McHENRY AVE  
PARK CITY, UTAH 84060





# Exhibit F – Proposed plans

(Plans will need to be changed to reflect the correct max amount of square footage allowed)



REVISIONS	BY

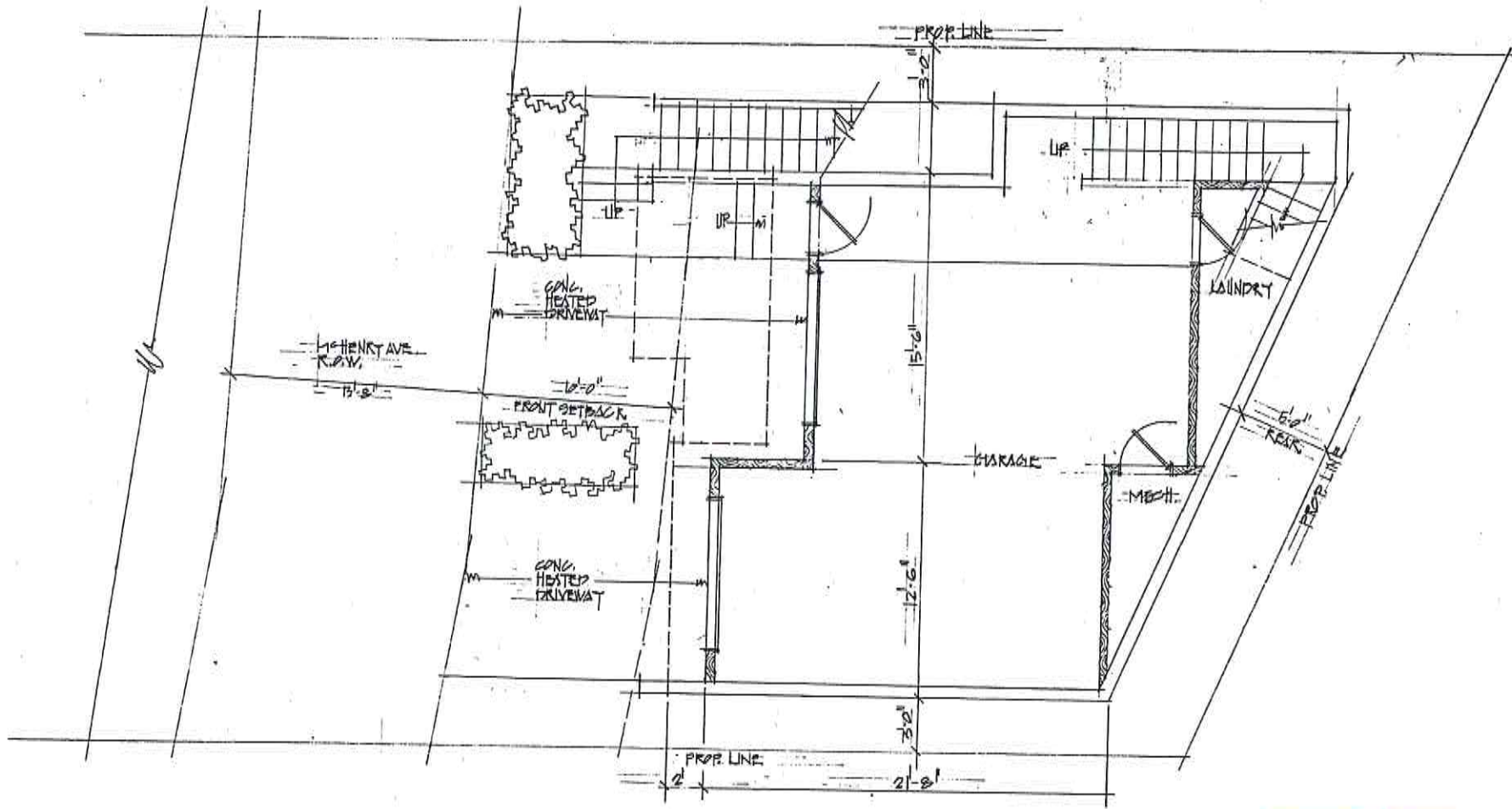
DAVID G. WHITE, ARCHITECT  
 P.O. BOX 1313 - 2703 ESTATES DRIVE  
 PARK CITY, UTAH 84060  
 (435) 649-8379 FAX: (435) 655-8845  
 EMAIL: dgwhite@remson.com

MAIN & UPPER LEVEL FLOOR PLANS  
 217 MC HENRY AVE  
 PARK CITY, UTAH 84060  
 Date: 9-22-16  
 Scale: 1/4" = 1'-0"  
 Drawn: [Signature]  
 Total 1100.79 #

RECEIVED  
 NOV 02 2016  
 PARK CITY  
 PLANNING DEPT.

REVISIONS	BY

DAVID G. WHITE, ARCHITECT  
 P.O. BOX 1313 - 2703 ESTATES DRIVE  
 PARK CITY, UTAH 84060  
 (435) 643-8379 FAX: (435) 655-8845  
 EMAIL: dgwhite@emission.com



GARAGE LEVEL  
 PLAN 775.5 #  
 1/4" = 1'-0"

RECEIVED  
 NOV 02 2016  
 PARK CITY  
 PLANNING DEPT.

GARAGE LEVEL PLAN  
 277 MC HENRY AVE  
 PARK CITY, UTAH 84000

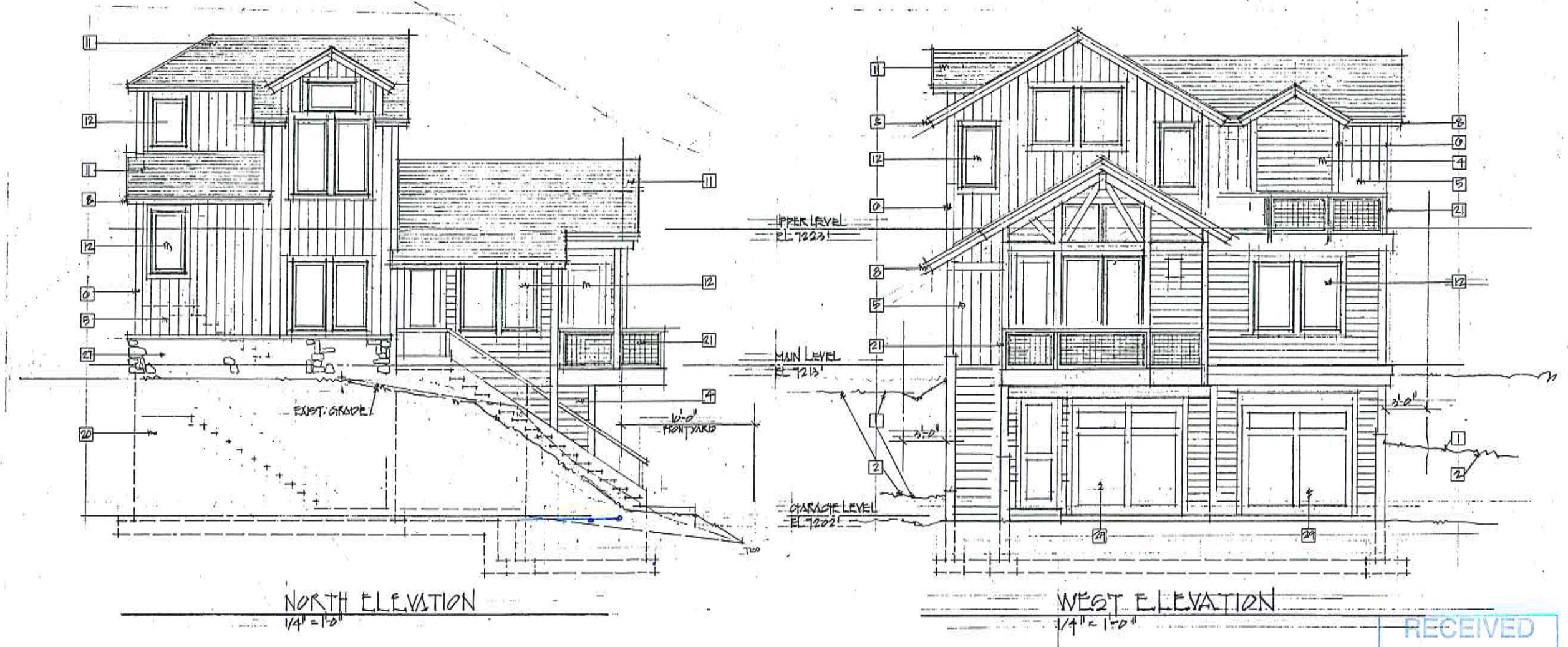
Date	0-12-16
Scale	1/4" = 1'-0"
Drawn	
Job	277 McHENRY
Page	42
Of	43



- REFERENCE NOTES
- Existing grade shown dashed
  - New finish grade
  - Glue-laminated beam- See framing plans. 1" chamfer all exposed ends. All Glue-lam beams to be smooth finish.
  - 1"x6" beveled Cedar siding. (New addition portion).
  - 1"x8" cedar siding square cut vertical pattern.
  - 2"x Cedar corner trim.
  - Exterior door and window trim- 2"x cedar jambs, 3"x heads and sills for windows and 3"x heads for doors
  - 1"x Cedar fascia. (two piece) See detail
  - 1"x6" Cedar soffit.
  - Roof to wall surface- extend ice and water shield over entire roof deck except top two feet @ ridges. Where vertical walls intersect roof, extend ice and water shield up wall min. 18" behind exterior siding material.
  - Roof Covering- Asphalt shingles, 50 yr rating.
  - Aluminum ext. clad insulated wood windows and doors. Windows and exterior doors U= 0.36 or better. See Window and Door Schedule.
  - Galvanized metal flashing.
  - 3 1/2" blown and batted insulation. R13 min.
  - 5 1/2" blown and batted insulation. R= 19 min.
  - 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
  - 10" blown and batted insulation. R= 31 min.
  - Waterproof membrane and drainage mat on all foundation walls protecting living space below grade. Install 6" perforated drain plastic drain wrapped in filter fabric and set in gravel. Extend downhill to daylight.
  - 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.
  - 8" reinf. Conc. foundation wall. See structural.
  - Guardrails- see details.
  - Floor joists- see framing plans.
  - Roof joists- see framing plans.
  - See interior finish schedule for floor, wall and ceiling finishes.
  - 4" concrete slab w/ 6x6-10/10 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.

REVISIONS	BY

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EMAIL: dgwhite@pmassion.com



BUILDING ELEVATIONS  
277 MC HENRY AVE.  
PARK CITY, UTAH 84060

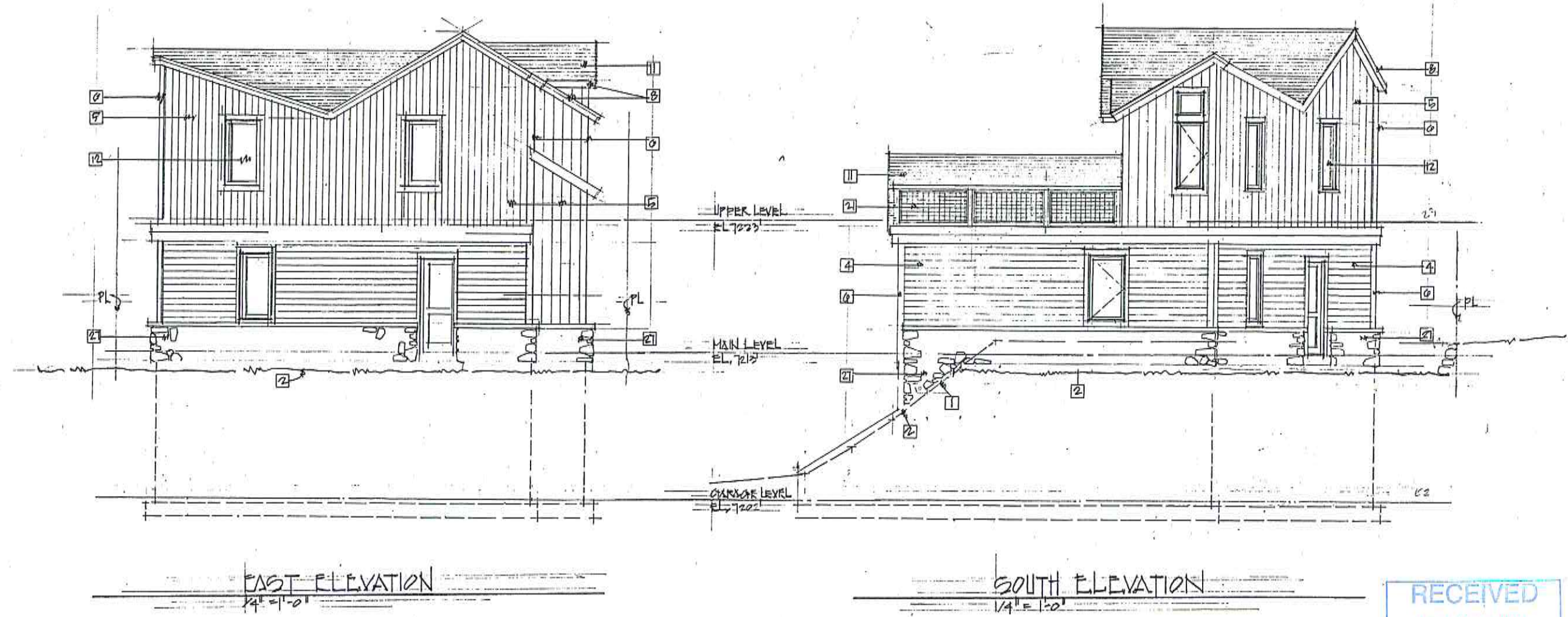
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PARK CITY  
PLANNING DEPT.



- REFERENCE NOTES
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  - Galvanized metal flashing.
  - 3/4" blown and binned insulation. R13 min.
  - 5/8" blown and binned insulation. R= 19 min.
  - 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
  - 10" blown and binned insulation. R= 31 min.
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  - Guardrails- see details.
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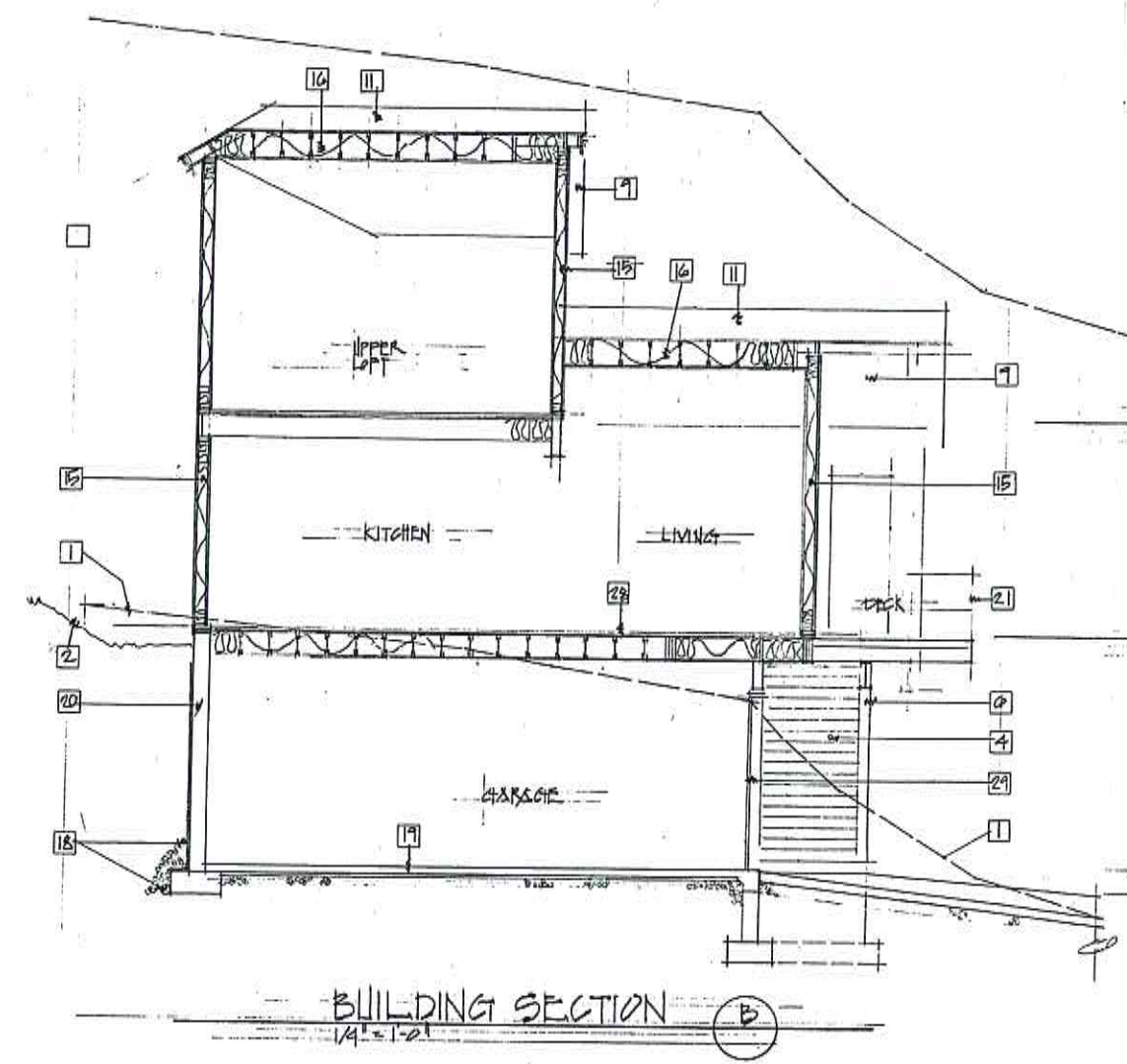
BUILDING ELEVATIONS  
277 McHENRY AVE.  
PARK CITY, UTAH 84000  
Date: 6-30-16  
Scale:  
Drawn:  
Job: 277 McHENRY  
Page 4 of 5  
Sheets



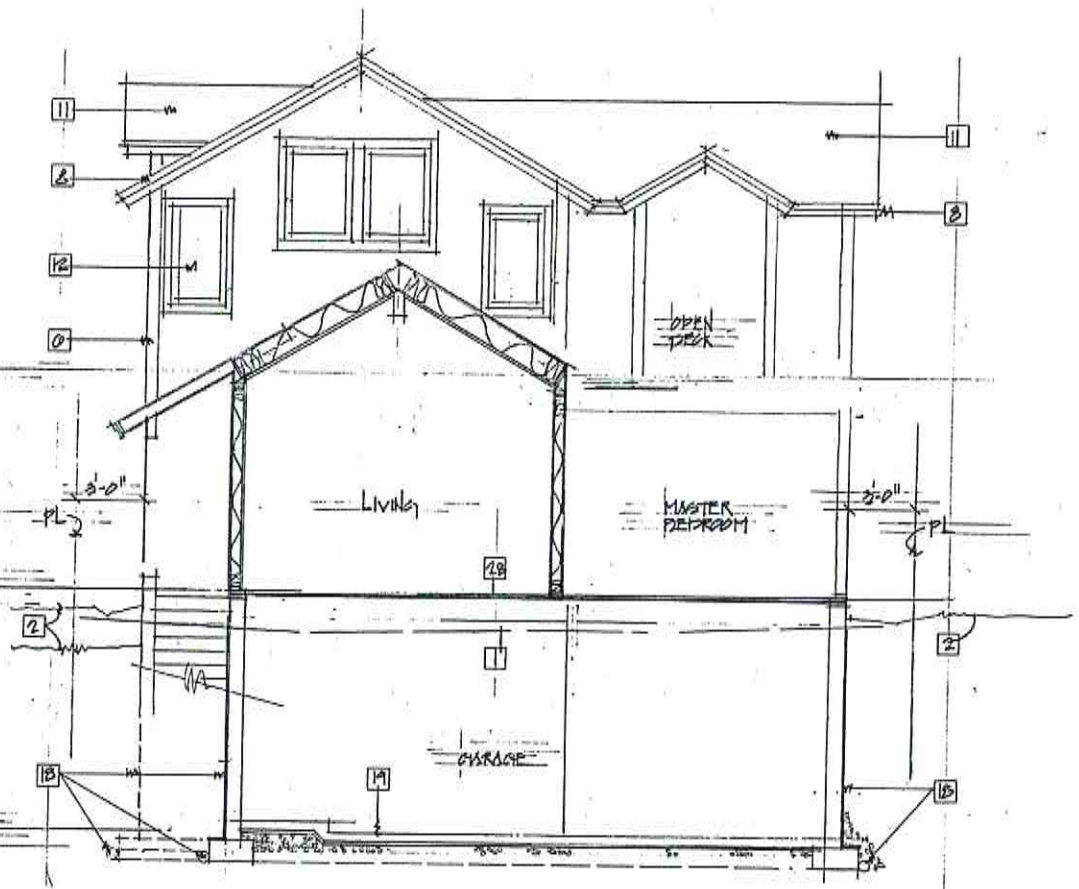
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BUILDING SECTION B  
 1/4" = 1'-0"



BUILDING SECTION A  
 1/4" = 1'-0"

RECEIVED  
 NOV 02 2016  
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BUILDING SECTIONS  
 277 McHENRY AVE.  
 PARK CITY, UT 84060  
 Date: 10-31-16  
 Scale:  
 Drawn:  
 Job: 277 McHENRY  
 Page 45  
 Sheet A-6

## Exhibit G – 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](mailto:hdeters@parkcity.org)

## Exhibit H – Board of Adjustment Minutes from March 21, 2017

PARK CITY MUNICIPAL CORPORATION  
BOARD OF ADJUSTMENT  
MINUTES OF MARCH 21, 2017 - DRAFT

BOARD MEMBERS IN ATTENDANCE: Ruth Gezelius – Chair; Hans Fuegi, Jennifer Franklin, Mary Wintzer

EX OFFICIO: Planning Director Bruce Erickson, Francisco Astorga, Planner; Makena Hawley, Planner; Polly Samuels McLean, Louis Rodriguez

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### ROLL CALL

Chair Gezelius called the meeting to order at 5:01 p.m. and noted that the Board did have a quorum.

### ADOPTION OF MINUTES OF FEBRUARY 21, 2017.

Board Member Franklin referred to page 21 of the Minutes. She noted that she was not in attendance; however, the header reading 252 Woodside Avenue, should be corrected to read **352 Woodside Avenue**. She believed it was a clerical error because it accurately reads 352 Woodside everywhere else in the Minutes for that item.

MOTION: Board Member Mary Wintzer moved to APPROVE the minutes of February 21, 2017 as corrected. Board Member Fuegi seconded the motion.

VOTE: The motion passed. Jennifer Franklin abstained from the vote since she was absent from the February 21<sup>st</sup> meeting.

### PUBLIC COMMUNICATIONS

There were no comments.

### STAFF/BOARD MEMBERS COMMUNICATIONS AND DISCLOSURES

Board Member Wintzer disclosed that about a week ago she was out walking and Anita Baer, a resident on McHenry, stopped her and said she had a question. Ms. Wintzer immediately advised her not to speak about it and to contact the project planner with her question, which she did.

Director Erickson stated that the BOA would potentially be meeting on April 18, 2017 to hear another appeal that is restricted by the 45-day time period. Board Member Fuegi was unable to attend on April 18<sup>th</sup>. Board Members Gezelius, Wintzer and Franklin would attend.

REGULAR MEETING – Discussion, Public Hearing and Possible Action

**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'**  
**(Application PL-16-03358)**

Planner Makena Hawley reviewed the application for the variance request at 277 McHenry Avenue in the HRL District. The application contained three proposals; 1) A variance to reduce the rear-yard setback to 5'; 2) A variance to the allowable floor area of the accessory structure 700 square feet to 1,164 square feet; 3) A variance to the maximum 1,000 square feet size allowable for the accessory structure.

Planner Hawley reported that the Staff supported the variances for items 1 and 2.

Planner Hawley assumed the Board members had read the Staff report and she was available to answer questions.

Board Member Wintzer noted that the Staff report indicated that if the variances are granted, it would be placed on the deed to be a single-family dwelling. She understood that the kitchen would be removed and the common wall would be removed from the space to create a single-family home. Planner Hawley explained that there would need to be some restricting in order to keep it from being a duplex living situation.

Chair Gezelius asked how they would handle enforcement. Planner Hawley stated that a building permit could be allowed for the accessory apartment. However, prior to issuing a certificate of occupancy, the applicant would have to submit final approved plans changing the duplex into a single family dwelling and there would have to be a final inspection.

Planner Francisco Astorga explained that if approved, this action would be conditioned; and subsequent applications by the applicant such as a conditional use permit for the accessory use, the Historic District Design Review, and a plat amendment to remove one lot line bifurcating the property. Planner Astorga remarked that should the Board of Adjustment grant the variance, all the work would have to be completed in the main dwelling, changing the status from the existing duplex to a single family dwelling, before a certificate of occupancy could be issued. All the improvements would have to be verified by both the Building and Planning Departments, and the deed restriction would have to be recorded before they could sign off on occupancy of the accessory apartment.

Chair Gezelius asked if this was a legal duplex. Planner Astorga replied that duplex is not allowed in the zone; however, the applicant, Michael Kaplan had



received a letter from a former Planning Director showing that there was a legal duplex on the property. Planner Hawley noted that it was a legal duplex and an allowed use at the time it was built in that zone.

Mr. Kaplan explained that when he purchased the house after the Olympics, he was told by the Building Department that he needed to remove the kitchen. However, the former Planning Director, Patrick Putt, found a letter from 20 years earlier indicating that it was a legal duplex. Mr. Kaplan remarked that he was removing the duplex use per an agreement.

Chair Gezelius asked if parking situation was allowed to continue when the duplex was grandfathered. Mr. Kaplan stated that there were two horizontal parking spaces on each side of the duplex.

Chair Gezelius asked Planner Hawley to indicate on the map that lot line that would be removed. Planner Hawley remarked that the lot line between 12 and 11 needed to be removed in order to build on the lot. Once that lot line is removed, the road that bifurcates the property would be given to the City because it has been used as a public road for over ten years. Therefore, this plat amendment would memorialize that road as belonging to the City.

Assistant City Attorney McLean clarified that the road is already dedicated. Under State law, when a road has existed for over ten years as a public thoroughfare, it is dedicated for public use. Ms. McLean noted that McHenry has been used for much longer than ten years, which is why the road immediately goes to public dedication.

Chair Gezelius asked if this was considered to be one parcel by the County Assessor. Mr. Kaplan answered yes. Assistant City Attorney McLean stated that it is unusual to have a lot with two parts to it. What was anticipated is that one would be called the lot, and the eastern part would be a parcel. There would be a note on the plat saying that it cannot be separately developed, and it is appurtenant to the lot. For example, it cannot be sold separately.

Board Member Wintzer asked if it would preclude the existing structure being torn down and a much larger structure placed in that location. Ms. McLean replied that both parcels added together would equal the lot. However, this is a unique lot because of the constraints of the road going through it. There would be two front setbacks to meet, and if there was room on the lot, Mr. Kaplan could build a house with a footprint allowed by the LMC for both parts together. Ms. McLean believed Mr. Kaplan would be constrained by the physical layout of the lot. Ms. Wintzer clarified that she was asking because of the parking, but also whether granting the variance would allow for an addition to the existing accessory apartment because the new structure would be larger.

Planner Hawley stated that the Planning Department supported the request up to 1,000 square feet for the accessory apartment because the lot is constrained with the current development and there is not a lot of room to extend the accessory dwelling. The Staff found that to be a unique reason to allow up to 1,000 square feet. Planner Hawley noted that if Mr. Kaplan was to demo his existing house, he would be held to the constraints of the LMC in terms of footprint for the lot, as well as the additional setbacks coming from that road from the front and the rear. Board Member Wintzer clarified that in any case, the accessory apartment could never become larger in the future. Planner Hawley clarified that the Planning Department was suggesting a maximum of up to 1,000 square feet. Board Member Franklin point out that the Code currently calls out a maximum of 1,000 square feet. Planner Astorga remarked that the Code states one-third and a maximum of 1,000 square feet. It is not “or” but actually both. If Mr. Kaplan had a bigger house, the one-third could be larger than 1,000 square feet; but it would then be restricted to 1,000 square feet.

Board Member Franklin understood that the grandfathering applied to the duplex. She asked if it applied to not only the east-west lot, but also the north-south or the 12 and 11 lot. She noted that the house sits on both Lots 12 and 11, and part of the proposal is that they become one plat.

Assistant City Attorney McLean explained that if a lot line goes through an existing house, it is allowed to exist that way, but for any kind of renovation, the City requires that the lot line under the home needs to be removed in order to come into compliance. Board Member Franklin asked if part of the non-conforming use is the fact that it hovers on two lot lines. Ms. McLean answered no, because that would be corrected by requiring a plat amendment. She noted that it makes more sense for the applicant to know if he would be granted a variance before going through the other processes so he will know what he can build.

Board Member Wintzer had visited the site, but found it difficult to see the impact of the Dennis family homes and the Christiansen house.

Planner Astorga commented on the non-conforming status. He stated that the original request that Mr. Kaplan brought to the City was to keep his duplex and build an accessory apartment across the street. However, because the District does not allow a duplex, the Staff recognized his non-conforming status and said they would only entertain the idea of an accessory apartment if he was willing to decrease the density from the duplex to a single family dwelling. If the BOA grants the variance, Mr. Kaplan would lose the ability to have a duplex on that property. The trade-off would be to add the accessory unit across the road.

Chair Gezelius understood that in the HRL zone, which was adopted to decrease density and to encourage single family homes versus small multi-units on larger lots, and not to be nightly rentals, duplexes are not allowed in the HRL zone.

Planner Astorga replied that she was correct. He reiterated that the Planning Department was willing to support the variance for the one-third, if the applicant was willing to decrease the density on his property.

Chair Gezelius stated that the historical thinking on the density, particularly on site constrained parking parcels was that every unit adds vehicles, snow storage, etc. She pointed out that regardless of size, each bedroom equals two cars. Duplexes do not work on these constrained streets, which was the thinking behind prohibiting duplexes in the HRL zone.

Board Member Franklin commented on the language regarding the accessory building being one-third of the footprint of the primary structure, and asked if that reflects where the original structure could be remodeled at 3x the size of the accessory unit if the accessory unit is built at a certain square footage.

Planner Hawley stated that currently the existing structure is 2100 square feet, which means the applicant is allowed 700 square feet for the accessory apartment. If the additional square footage is not allowed it would remain at 700 square feet. If the applicant were to add on to the existing duplex, for example, to make it 3,000 square feet, the accessory apartment could be 1,000 square.

Board Member Franklin asked if the Board allowed the 1,000 square feet, whether the primary home could then be remodeled to 3,000 square feet. She clarified that she was asking whether the primary residence could gain more square footage based on the size of the accessory apartment. Planner Hawley replied that the accessory apartment square footage would not dictate the primary house. However, it would be dictated by the building footprint maximum for the lot, the setbacks, etc.

Board Member Franklin asked for the configuration of the current home in its duplex nature. Mr. Kaplan stated that he lives in the top two floors. The bottom floor is an apartment for ski area workers.

Board Member Wintzer thought Anita Baer made a good point in her. She did not believe a variance has ever been granted in that neighborhood for increased living space. Variances have been granted for garages. Ms. Wintzer believed that David White, the project architect, had done the design work for David and Patricia Constable and Dustin and Brady Christiansen. She recalled that the Christiansen's were only able to have a one-car garage and a parking space outside. Ms. Wintzer stated that in looking at the floor plan, she thought Mr. Kaplan could still have a one-car garage and a parking spot without having to push the house back 5' on to the back lot.

Planner Hawley stated that the parking requirements for an accessory apartment is one legal parking space per bedroom. A maximum of two bedrooms is allowed for the accessory apartment. Ms. Winter understood that the parking spaces

could be pad parking and not necessarily garages. Planner Hawley agreed that it only had to be legal parking spots.

David White remarked that the two-car garage designed fits into the hill, and it is not visible. It is totally underground. There was a 3' side yard setback and a 10' front yard setback. Mr. White noted that Mr. Kaplan had suggested reducing the rear yard setback. Board Member Wintzer wanted to know the benefit of reducing the rear yard setback. She understood that the advantage was to increase density. Mr. White replied that it was to increase the footprint; however, the resulting footprint is allowed with a variance. He acknowledged that if they maintained the 10' rear yard setback, the square footage would be reduced.

Planner Astorga referred to the comment about reducing the parking and having a one-pad driveway in front of the garage. He explained that Mr. Kaplan has an extra front yard setback because the road bifurcates the two parcels. Therefore, there is an additional restraint on the site of adding another 10' setback from that roadway. In order to have legal parking, the space must be 9' x 18'. Planner Astorga stated that even if Mr. Kaplan had a driveway in front of the garage, it would not meet the minimum requirement to be classified as a legal parking spot. Planner Astorga pointed out that it was not just the road, but also the added setbacks that go on either side of the road that the applicant has to meet, which pushes the house back towards the rear. Because of this unique condition on the site, the Planning Department was recommending that the Board of Adjustment grant the variance. Planner Astorga stated that Ms. Wintzer was correct in saying that no one else was granted a variance, because the variance is for a unique condition that only applies to a specific site in the neighborhood.

Board Member Wintzer clarified that she was not saying that people in the neighborhood have never applied for a variance. She recalled that another neighbor had a similar situation, and they applied for a variance and were denied. She believed that variances are typically denied for that neighborhood because of the substandard nature of the road.

Planner Astorga clarified that this was a unique condition because the property owner has less than half a lot on the other side of McHenry. He remarked that in some cases there were properties with a few square feet and those property owners were asked to dedicate that portion of the road. In this case it is a significant parcel. Planner Astorga noted that this application decreases the density from 2 units to 1-1/2 units, including the accessory apartment.

Chair Gezelius believed that a 1,000 square foot accessory unit exceeds the template of historical. In terms of parking, she could see four cars with two bedrooms. Chair Gezelius stated that asking for a larger than standard unit on such a sight constrained street with existing parking problems, is not that simple. when talking about reducing the 5' rear yard setback, no one knows what will

happen to the land on the other side with 5'. They know what it is currently zoned, but there are no guarantees that the zoning will not change. If it is re-zoned, people walking by could be 5' from the front door and that is not the best living situation. Chair Gezelius stated that asking for the setback exception and for the size exception was asking a lot for this street, even though it is a unique situation. She suggested that a 700 square foot unit that might only have two people with a two car garage would fit more with the parameters of what the City has been trying to do in the HRL zone. She found it to be a dilemma.

Planner Astorga believed that Planner Hawley had done a good job writing the alternatives in the application. He noted that there were three variances requested variances and the Planning Department supported two of the three. Planner Astorga explained that with any of the alternatives, the BOA could make findings and ask the Planning Department to come back in support of one, two, or all three of the requests; or deny all of them.

Planner Hawley noted that if an accessory apartment is built on a lot, neither the accessory apartment nor the main dwelling can be utilized for nightly rentals. It has to be longer than 30. Planner Hawley stated that if the 5' reduction is granted in the rear they would still have to comply with all other setback requirements. For example, a hot tub requires a 3' setback from the rear property line. A hot tub would not fit unless it is only 2 feet. She pointed out that very few things would fit in the 5' setback.

Michael Kaplan stated that this has been a nine-year ordeal. The process has been up and down and he thanked the Planning Department for their efforts, even though there have been disagreements on many of the issues. Mr. Kaplan respectfully requested that Board Member Wintzer recuse herself from voting because she lives on McHenry and it is a conflict of interest. He recognized that it was up to Ms. Wintzer to decide whether or not to recuse.

Mr. Kaplan stated that his original request was to create two lots of record that could be built on. If he had done that a number of issues would have been resolved. He plans to live up there full-time. In terms of compromises, he was willing to give up the property downstairs that not only pays part of his mortgage, but also provides employee housing which is needed in the community. Mr. Kaplan stated that he agreed to comply with the Building Department requirements and take out the oven and the plugs for an oven in order to remove the kitchen on the bottom floor. He also agreed to surrender the road to the City for the continuation of public use, even though he thought it was unfair because he pays the taxes on that land. Regarding the extra space, Mr. Kaplan noted that the he had agreed to and the Staff supported 1,000 square feet, but he was asking for 1,166 square feet. He pointed out that the extra was only 166 square feet, which would make the house more livable than a 1,000 square feet.

In response to the parking concerns, Mr. Kaplan stated that he lives alone. There is a two-car garage underneath and he would only be using one of those spots.

To address the rear yard setback issue, Mr. Kaplan passed around photos he had taken that afternoon. He reviewed a map showing the open space property line and the Junior Mining Claim. He noted that two of the neighboring houses cross over that Junior Mining Claim. He indicated where his house would sit and the 5' setback. His neighbors have exceeded the setback by five or more feet, but he was only going up to 5'.

Board Member Wintzer was certain that a certified survey has to be done before a house can be built. She asked if that was done. Planner Hawley showed the survey. Planner Astorga pointed out that the survey was only for 277 McHenry. It did not show the neighboring properties. Ms. Wintzer stated that when she built a recent home, the surveyor had to come back and certify it and the inspector had to verify it. She questioned how the other homes could extend over the property line, particularly since one of those houses were recently built. Board Member Wintzer clarified that Mr. Kaplan was talking about the Christiansen house.

David White stated that he was the architect on the Christiansen house. At first, the original historic house extended over the property line of the mining claim. Ms. Wintzer could understand that because historically surveys were not done. Mr. White remarked that when the old house was taken down and remodeled, they moved it north and west so it would adhere to the proper setbacks. He explained that the existing house was in such poor condition that they were allowed to take it down. Mr. White stated that for whatever reason, the original house sat over the rear property. When they were allowed to take down the house and rebuild it, they were allowed to move it and add an addition, as long as it adhered to the rear yard and side yard setbacks. That is why the Christiansen house is legal now.

Mr. Kaplan stated that his goal is to live there quietly in a small amount of space. He was only asking for 1,166 livable square feet.

Chair Gezelius understood that Mr. Kaplan was planning a dwelling unit to live in himself as an accessory unit, and to rent the main house. Mr. Kaplan replied that she was correct.

Chair Gezelius opened the public hearing.

There were no comments.

Chair Gezelius closed the public hearing.

Chair Gezelius noted that the Board must find that the requests complies with all of the five criteria outlined in the Staff report on each of the three variance requests.

Chair Gezelius called for Board comments on the variance request to reduce the setback in the rear from 10' to 5'.

Board Member Fuegi referred to a letter from Heinrich Deters that was provided in the Staff report. Planner Hawley explained that Mr. Deters was describing that on the recreation open space there are standards with the Wildland Fire Mitigation. For example, if a structure is up against the ROS zone and right on the property line, a specific setback from the structure must be maintained and specific wildland fire mitigation must be done, such as cutting down trees. Mr. Heinrich was saying that trees would be lost and money would be spent. The closer the structure is to the property line, the more they have to mitigate. Board Member Fuegi understood that the houses on either side were also over the boundary, and he believed that they would have to mitigate for those structures in a similar fashion.

Board Member Franklin referred to a drawing on page 58 of the Staff report. She clarified that the front setback said 10'. Mr. Kaplan answered yes. Ms. Franklin asked if the drawing on page 58 was showing a staggered garage door. Mr. Kaplan answered yes. Ms. Franklin understood that double garage doors were not allowed in the Code, and she asked if side by side garage doors were prohibited as well. David White replied that garage doors are allowed side by side, but aesthetically he tried break it up rather than having one flat wall. Mr. White stated that the break could be reduced if they preferred, but it was currently designed at 5'.

There was no further discussion on the setback variance.

Chair Gezelius called for discussion on the variance for the accessory apartment size. She asked if there was consensus that it was acceptable to have an accessory unit under the limits of the Code. Planner Astorga stated that an accessory apartment is subject to a conditional use permit, which the BOA does not review. He explained that the variance the applicant was seeking would be to allow more than one-third of the size of the primary dwelling. Whether or not he could actually have the accessory apartment would be up to the Planning Commission. Planner Astorga explained that the role of the BOA on this matter is to determine whether or not to deviate from the Code and grant the variance request to exceed the one-third rule.

Board Member Fuegi questioned why the BOA would be considering a variance without knowing if the accessory structure would be approved by the Planning Commission. Assistant City Attorney McLean understood the concern. However, the applicant needed to come in for the variance first, because if he

wants an accessory apartment that is larger than 700 square feet, he would not want to go through the Planning Commission process and then find out afterwards that the BOA would not grant the variance. Ms. McLean stated the standards are higher for a variance, and it is normally harder to obtain a variance than a conditional use permit. Planner Astorga noted that the Planning Commission is not allowed to look at unique conditions.

Chair Gezelius called for comments on the appropriate size for a variance for the accessory apartment on this specific hardship application. She noted that the Staff recommendation was to find for a 1,000 square foot size. The applicant was asking for 1164 square feet.

Board Member Fuegi asked Mr. Kaplan how many bedrooms and bathrooms would be in the accessory unit. Mr. Kaplan replied that it would be two bedrooms and two bathrooms.

Director Erickson clarified that Variance Request #2 was only for the application of the 1,000 square feet. Variance Request #3 requests the additional 164 square feet. The question for Variance #2 is whether there are special conditions on this site that create a hardship that would not allow fair application of the square footage, which is one-third of the square footage of the primary dwelling. Variance #3 addresses the ability to allow larger than the 1,000 square foot restriction because of the special circumstances on the site.

Planner Hawley clarified that the Staff was recommending approval for the 1,000 square feet. Planner Astorga gave a brief presentation to explain the reason for their recommendation.

Board Member Wintzer asked if the Staff looks at the purpose statement in making their decisions. She wanted to know if they considered the road conditions, the dead end, and the tight constraints of the neighborhood. Ms. Wintzer asked if those factors were taken into consideration, or whether the Staff only looks at the rules. Planner Astorga explained the Staff is required to look at State and Local variance criteria regarding unique conditions. They also look at other factors and the regulations and the purpose of such regulations, but the findings, whether for granting the variance or denying the variance, must be tied to Criteria 1 through 5 and nothing else. Planner Astorga stated that the Staff was not able to find that connection for the third variance request to exceed 1,000 square feet. Even without the road, Mr. Kaplan would still be limited to 1,000 square feet.

In response to Mr. Kaplan's comment about recusal, Board Member Wintzer stated that she genuinely believed she could be impartial; otherwise she would have recused herself. She believed she had valuable history and understanding of the road. Ms. Wintzer remarked that she has a one bedroom, one bath, 600 square foot house in Hurricane. She knows there are constraints and she has



had to be creative, but it is possible to enjoy the house. Based on her knowledge of the traffic and the road, and the health and safety hazards of the road, she was finding it difficult to grant Variance #2.

Chair Gezelius asked Ms. Wintzer about Variance #1. Board Member Wintzer stated that it was a matter of fairness. She thinks about everyone who has had to comply with their rear yard setback, and those who had to setback more because of the road situation. She did not believe that factored into her impartiality, but she has seen many people denied for increased square footage.

Mr. Kaplan commented on the concerns raised about snowplows and parking. He pointed out that the two cars that currently park along McHenry Avenue would be parked in a garage, which would help alleviate parking and plow issues. Ms. Wintzer assumed that the garage was for the new cars coming to the dwelling; not the two existing cars. Mr. Kaplan remarked that it would only be two cars because the number of people would not change. Instead of parking along McHenry Avenue, they would be parked underground underneath the house, which will improve the parking situation. Ms. Wintzer wanted to know where the renters would park. Mr. Kaplan replied that they would park where he currently parks on the other side of the street.

Director Erickson referred the Board to Variance #1, and read Criteria 1 which stated that literal enforcement of the 10' setback would cause an unreasonable hardship for the applicant that is not necessary to carry out the LMC. He asked if the Board found that to be a true statement.

Chair Gezelius believed it was a unique situation that created a hardship. Director Erickson replied that her comment related to Criteria 2, which was special circumstances attached to the property that do not generally apply to other properties in the same zone.

Director Erickson believed those were the two crux issues on the question of setback. In both cases the Staff believed there was an unreasonable hardship and that there were special circumstances attached to the property. If the Board was comfortable with the Staff recommendation, they could move to the next variance.

Board Member Franklin stated that for Criteria 1, she found that it does not comply because she did not see it as an unreasonable hardship. Ms. Franklin felt it complied with all the other categories; however, they were asked to find compliance with all five criteria.

Board Member Wintzer stated that the three criteria she was concerned about was a) reducing the density for substandard street areas; b) provide an area of lower density residential use within this zone of Old Town. She could go either

way on c). Ms. Wintzer clarified that she was talking about where the variances do not meet the criteria.

Ms. Franklin clarified that her statement only related to Variance #1. She was not referring to all three variances. Chair Gezelius noted that they were only talking about Variance #1 at this time. Ms. Wintzer explained that she did not believe that a smaller setback would reduce the density. Director Erickson pointed out that density was a function of the LMC, and related to Criteria 1.

Board Member Fuegi thought the first one was questionable. He agreed with the Staff recommendation on the other two.

Chair Gezelius clarified that three Board members were not comfortable with Variance #1.

Chair Gezelius called for comments on Variance #2, which was the accessory apartment size regarding one-third and up to 1,000 square feet.

Board Member Franklin agreed that there was compliance with all five criteria on Variance #2. Board Members Wintzer and Fuegi concurred.

Chair Gezelius called for comments on Variance #3, the accessory apartment size, and the request to exceed the maximum 1,000 square feet to 1164 square feet. The Staff that this variance did not comply with the five criteria.

Board Member Franklin concurred with the Staff that Variance #3 did not comply with all five criteria. Board Members Wintzer and Fuegi concurred.

Chair Gezelius stated that there was consensus regarding Variance #2 and #3; but there was not consensus on Variance #1 regarding the reduced rear setback. Chair Gezelius asked if the Board should continue Variance #1 or call for a motion.

Assistant City Attorney stated that under the Board of Adjustment rules, three members must vote to pass a motion; otherwise it does not go forward. Director Erickson asked if there were three Board members willing to vote one way or another on Variance #1.

Planner Astorga understood from their comments that the BOA found consensus regarding denying Variance #1, approving Variance #2, and denying Variance #3. He understood that Ms. Gezelius was suggesting a continuance because there were not written findings for the denial of Variance #1. Assistant City Attorney recommended that if there was consensus to Variance #1, they could take a break and allow the Staff to amend the facts for denial of the setback, or the Board could amend the facts with help from Staff.

Board Member Franklin asked if they could reopen the discussion on Variance #1. She recalled other projects changing the setbacks where the Board worked was able to come to an agreement on a different setback where they felt it did comply. Chair Gezelius pointed out that the setback is 10 feet without a variance, and the request is for a 5' foot reduction. She did not understand Ms. Franklin's suggestion. Board Member Franklin stated that in the past the Board has granted a setback exception of a different number, for example, 7' instead of the requested 5'. Assistant City Attorney McLean stated that if three Board members agree that another number is more appropriate than 5' for a reduced setback, they could change the variance. Chair Gezelius pointed out that changing the variance would require a redesign on the part of the applicant, but that would be on the applicant and not the BOA. Board Member Wintzer believed that in the case Ms. Franklin was recalling, the applicant had proposed the possibility of a different setback from what was originally requested. She did not think the Board had made that suggestion.

Mr. Gezelius asked if the applicant would consider another number besides the 5' rear yard setback reduction, and if so, whether he would prefer that the Board continue Variance #1 to give them additional time to rework the plan.

David White stated that at the present time, the garage itself is set back from the 10' front yard setback. If they brought it forward, they could work with a 7' rear yard setback. Mr. White explained that his original intent was to avoid two-story high flat walls. He acknowledged that some redesign would be required in order to make a 7' setback work.

Director Erickson referred to the Staff's determination on page 41 of the Staff report. He noted that currently the Staff finds that literal enforcement of the required 10' rear yard setback is a hardship, and not necessary to carry out the general purposes of the LMC. The thinking behind that is that the 5' rear yard setback would not negatively affect the trails and open space abutting the property line. Director Erickson pointed out that the Open Space and Trails Manager had a different opinion, and believes that the 5' setback would negatively affect open space and trails. Director Erickson stated that the Board could make the finding that if putting the building too close to the wildland interface requires additional work to cut more trees, then it would have a negative effect. He remarked that the next question would be whether the 5' rear yard setback only helpful on this lot, or does it apply throughout the rest of the neighborhood. Director Erickson believed that in this particular case, it was argued that the 10' rear yard has been applied consistently through the neighborhood; and not the 5' variance that was being requested in this case.

Chair Gezelius clarified that at this time there is no other lot exactly like the subject lot. Director Erickson agreed, which is the balance point. He believed the Staff made the case that there are a number of misshapen and odd lots, and road right-of-ways, and other things in the neighborhood. Director Erickson

remarked that the discussion point is whether the 5' setback is unique specifically to this lot; or was it a matter of the applicant trying to do the right thing by complying with the Historic District Guidelines with respect to garage doors.

Planner Astorga noted that Planner Hawley had highlighted the Findings of Fact regarding the 5' setback. He thought they could pinpoint the Finding that addresses Criteria 1, the criteria the Board had issues with, which specifically says that literal enforcement of the LMC would cause the hardship. That Finding could be changed per the discussion this evening, and the Board could make a motion consistent with their discussion, unless they were leaning towards proposing another reduced setback. Planner Astorga did not believe the other highlighted Findings applied to the literal enforcement of the Code.

Assistant City Attorney McLean asked if the Board was suggesting that Variance #1 be denied completely, or that it be reduced to a certain number of feet. Board Member Franklin clarified that she raised the idea of a reduced number because she thought it was an option. If it was not an option, she would withdraw her suggestion. Ms. McLean stated that Ms. Franklin could make that motion and see if it was supported by the other Board members. Ms. Franklin remarked that with the compliance of less than 1,166 square feet, once they move closer to under 1,000 square feet, the math will work towards bringing it away from the 5' setback and closer to having a smaller structure. Ms. Franklin referred to Mr. White's comment about getting closer to complying with Variance #1 by the compliance of Variance #2. She thought it might be worth continuing to see if there is compliance with the 10' setback with the new square footage as approved.

David White clarified that Board Member Franklin was referring to the maximum of 1,000 square feet. Planner Astorga understood that Ms. Franklin was saying that, but the Board was saying that a 5' variance was excessive, and they would like to give the architect the opportunity to come up with a number between 5' and 10' that would most likely be consistent with the 1,000 square foot restriction.

Chair Gezelius stated that she was sympathetic to Mr. White's point that there is a concerted effort in the Historic District to avoid the "garage barrage". Having some variation on the front façade would affect more people than a few feet of variance in the back of this property that few people see. She believed it was worth some trade-off for a reduction in the setback to get a more attractive entry in the front.

Board Member Fuegi noted that the applicant would be losing approximately 15% of the 1166 square feet requested. He asked Mr. White if that 15% would be enough to stay within the setbacks. Mr. White replied that it would be close, but he could work with it. Mr. White believed they could maintain the two-car garage; however, currently the mechanical, storage, and circulation is contained within the volume of the garage rather than outside. Mr. Fuegi believed that if

they were talking about 2' of setback, it was more liking splitting hairs and he was unsure if that was necessary. He thought that reducing their square footage by 15% or 166 square feet would take care of the 5' setback.

Board Member Franklin understood that at 30 feet wide, she believed that a couple of feet would eliminate having to request Variance #1.

Planner Hawley pulled up the floor plan. Planner Astorga wanted to avoid Mr. Kaplan having to come back with another variance request for not meeting the interior spaces for parking. He noted that 9' x 18' was only the exterior. The interior was 11' x 20'. Planner Astorga reviewed the plans and indicated 5' off the back. He did not see the measurements on the garages, but he assumed it was 20' long. Mr. White stated that the garage was dimensional crosswise. He indicated the depth of the garage. Planner Astorga pointed out that if Mr. White kept the same shape and pushed it forward it would still meet the 10' setback, but it would only give two or three feet to work with on the corner. Planner Astorga was concerned that if it was 20', Mr. Kaplan would have to come back to the Board of Adjustment for a variance to build the garage he needs.

Chair Gezelius believed it was inappropriate to ask Mr. White to redraw his plans while the Board gives input. She thought it was more appropriate to continue this item and give the applicant and his architect the opportunity to look at a redesign with a lesser rear yard setback variance; and understanding that 1,000 square feet was the maximum the Board would approve for the accessory unit.

Mr. White pointed out that the dash line was the limits of the house above; and those lines hit the setback. He stated that conceivably he could move the garage slightly. However, to increase the rear yard setback, the actual house would have to become smaller. Mr. White noted that currently the house was 1164 square feet, and he understood that they would be limited to 1,000 square feet. Planner Astorga reviewed the elevation and pointed out that the garage was 21'8". Therefore, the garage could be decreased in size and pushed forward. Planner Astorga remarked that Mr. White was indicating that he would have a difficult time meeting the Design Guidelines in terms of the required articulation and variation. That was the reason why he designed the overhang on top of the garage. Planner Astorga thought it was appropriate to continue this to another meeting, at which time Mr. White could provide sketches of what might work within the specific constraints of the site.

Planner Astorga understood that the Board was not comfortable with the 5' setback as recommended by the Staff.

Assistant City Attorney McLean remarked that since there was Board consensus on two of the three variance requests, she suggested that they vote on those two based on the findings in the Staff report.

MOTION: Board Member Franklin moved to CONTINUE requested Variance #1 with the direction to the applicant and the Staff to rework the setback under the basic 1,000 square foot limit. Board Member Fuegi seconded the motion.

Planner Astorga requested that the Board continue to a date certain so the Staff would not have to re-notice the item. After some discussion, the decision was made to continue to the April 18<sup>th</sup> meeting.

Board Member Franklin amended her motion to Continue Variance #1 to April 18, 2017. Board Member Fuegi accepted the amendment to the motion.

VOTE: The motion passed unanimously.

MOTION: Board Member Franklin moved to APPROVE Variance #2 in accordance with the Findings of Fact, Conclusions of Law, Order and Conditions of Approval found in the Staff report relating to Variance #2. Board Member Wintzer seconded the motion.

VOTE: The motion passed unanimously.

MOTION: Board Member Franklin moved to DENY Variance #3 subject to the Findings of Fact and Conclusions of Law and the Order found in the Staff report relating to Variance #3. Board Member Fuegi seconded the motion.

VOTE: The motion passed unanimously.

Planner Astorga wanted to make sure that the applicant understood that the reason for continuing Variance #1 was to avoid the situation of having the Board grant a variance that would create another variance request. He appreciated the applicant's patience and the Board's creativity in order to move this forward. It is important to get it right, and he believed this was the appropriate course of action.

Ms. Franklin stated that when she mentioned the garages she did not want the creativity in their discussion to be construed as any type of direction. It was merely an issue she raised in terms of how to make it work for the applicant and for the community.

#### Findings of Fact – 277 McHenry Avenue

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 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.
5. 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.
6. The subject site contains a total of 4,381 square feet minus the road.
7. The western portion of 277 McHenry is a total of 2,557 sq. ft.
8. The eastern portion of 277 McHenry is a total of 1,824 sq. ft.
9. The road equates to 452 sq. ft.
10. 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.
11. The minimum lot size in the HRL is 3,750 sf.
12. The accessory apartment design proposes 823.2 sf. footprint.
13. The design includes construction of an accessory apartment with a two-car garage at the basement-level with living space and decks above it.
14. In the HRL zone, an accessory apartment is a Conditional Use.
15. The Duplex was built in 1973 over two property lines. No building permits could be located.
16. Side yard setbacks for the lot are 3 feet minimum and 6 feet combined. The proposal meets the side yard setback requirements.
17. Parking requirements for a Single Family home is 2 spaces per dwelling unit.
18. Parking requirements for a Duplex dwelling is 2 spaces per dwelling unit.
19. Parking requirements for an accessory apartment are 1 space per bedroom.
20. The accessory apartment is proposing 2 bedrooms and 2 parking spots.
21. 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.
22. According to City Records there are no other Accessory Apartments permitted by the City within 300' of the property.
23. The depth of the east portion of the lot ranges from 42 feet to 55 feet.
24. 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.
25. 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.
26. The alleged hardship consists of an existing road, McHenry, which bifurcates the subject site.
27. The location of the McHenry Road, splitting the subject site in two, does not allow any construction in that same location.

28. The alleged hardship is not self-imposed or economic as the site has had a "road running through it".
29. 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.
30. Essential enjoyment of the property is affected by the location of McHenry Avenue.
31. 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.
32. 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.
33. There is no relationship between the hardship of the site, the bifurcating road, and the regulation city wide consisting of 1,000 sf.
34. 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.
35. The proposed variance for additional square footage above 1,000 square feet 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
36. 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.
37. Legal notice was published in the Park Record on March 4, 2017, according to requirements of the Code.
38. No public input was received at the time of writing this report.
39. 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.
40. 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 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 15-4-7 (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.
2. 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 – 277 McHenry Avenue

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.

Chair Gezelius adjourned the meeting at 6:42 p.m.

Board of Adjustment Meeting  
March 21, 2017

Approved by \_\_\_\_\_  
Ruth Gezelius, Chair  
Board of Adjustment

**Exhibit I – Public Comment provided by publishing date May 12, 2017**

March 20, 2017

Makena Hawley,

I live at 235 McHenry next to Michael Kaplan's house, As you know our street is very narrow more recently since the road repair we are driving on a more narrow street.

I understand the need for a garage and that is wonderful. As I read your report I understand Mr. Kaplan's house will be a one family home that would help to limit the cars of renters, however if Mr. Kaplan decides to rent again the downstairs unit how does that help the neighbors and especially the snow plow.

After living here for almost 28 years I see very few variances allowed I am sure the the planning department will make a decision that is good for our neighborhood.

Anita Baer

May 8, 2017

To the Park City Planning Commission,

In reference to PL-16-03358

I would like to address the Variance issue proposed. Living on McHenry for 28 years there have been no variances granted. A few years ago I requested permission to leave a deck crossing a property line I was denied. Please note the Property in question I own. I was very sad and confused how that could happen.

If you permit a variance after all the no variances for me and others how does that establish a continuance of rules established on McHenry. I cannot speak to other variance issues around old town.

I do believe people have a right to build on their own property within the guidelines set.

Thank you for hearing my opinion.



Anita Baer  
235 McHenry



**From:** [Merritt Hooper](#)  
**To:** [Makena Hawley](#)  
**Subject:** Application #-PL16-03358; 277 McHenry Avenue  
**Date:** Thursday, May 11, 2017 1:03:40 AM  
**Importance:** High

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Dear Makena:

We hope this email finds you well. We wanted to reach out given an application that is currently up for review – Application #PL16-03358 – 277 McHenry Avenue. We have lived on McHenry Avenue for about 10 years at 335 McHenry Avenue. We understand that the owner of 277 McHenry Avenue is asking for a 5 foot variance so he can build a garage with a 2 or 3 bedroom accessory apartment. We feel that if the variance was only for a garage to park cars that is one thing as it would get the cars off of the street (which would be very helpful given our issues with street size/issues especially during the winter/snow season. Adding more people to our street with renting out a potential apartment with the garage really is not feasible nor safe. We already have a lot of traffic that goes up and down our street and now with the repaving/gutters that were put in last year, we now have a very treacherous situation. The snow/ice builds up in the street gutters which are pretty deep and so the road is even more constrained in size during the winter months now. People coming so fast up our street that there have been a number of “close calls” given cars can barely pass each other on our street and sometimes require the uphill car to back down an icy street, which again is not a good situation at all. Our road is already substandard and treacherous and adding any more cars potentially parking on our street will only increase the potential for hazardous road conditions on McHenry. In addition, we already have issues that our road is so narrow that the garbage truck has to back up our street in order to collect trash and they cannot turn around at the cul-de-sac any more. So what if there was a fire on our street and emergency vehicles would have to get up quickly to help, our neighborhood would be at a major disadvantage given the substandard nature of our street and not to mention if there were extra cars parked on the street to prevent emergency vehicles access to the homes/areas in need.

We support a garage only structure but strongly OPPOSE a garage/apartment structure for 277 McHenry Avenue. Thank you in advance for your consideration as we greatly appreciate it!

Sincerely,

Merritt and Bob Bennett  
Cell (310) 678-8327  
335 McHenry Avenue, Park City, UT

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Certain private funds offered through Ares Investor Services LLC, Member FINRA SIPC, a wholly-owned subsidiary of Ares Management LLC.

Public Comment submitted 5/12/17 by a neighbor that was noticed within the 300 feet:

A 10' setback to begin with, is aggressive. We own homes in CT where the setback is 25-50'. Even in densely populated Houston, where we also own a home, the side-lot setback is 10' with average lots being 1/4 acre.

To go from 10' to 5' would be a mistake. It not only sets a bad precedent, but we are already so densely spaced that this is sending PC in the wrong direction.

Where will it end? 2' setbacks? I think we need to keep the integrity of PC and honor the 10' setbacks.