

PARK CITY MUNICIPAL CORPORATION
BOARD OF ADJUSTMENT
MINUTES OF FEBRUARY 27, 2018

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

EX OFFICIO: Planning Director Bruce Erickson, Anya Grahn, Planner; Polly Samuels McLean, Laura Newberry

ROLL CALL

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

ADOPTION OF MINUTES

November 28, 2017

Board Member Franklin referred to page 8, paragraph 4, and comments by the applicant Mr. Pyper regarding hardship. She noted that Mr. Pyper had stated that it was not a hardship, but later in the meeting asked to correct that statement. She asked if the two statements should be closer together in the Minutes. Ms. Franklin was concerned that people would not know that Mr. Pyper corrected his statement if they did not continue reading through the Minutes.

City Attorney McLean stated that since it was part of the same item the assumption is that people would read it all. She noted that the Minutes are chronological to the meeting, and Mr. Pyper did not correct his statement until the end. She appreciated Ms. Franklin's concern for the public, but the Minutes should reflect when it was actually said.

Board Member Fuegi referred to page 4, "Chair Gezelius opened the public hearing subject to re-opening if necessary". He corrected the sentence to say "**closed** the public hearing subject to re-opening if necessary".

Board Member Fuegi referred to page 6, "Board Member Fuegi understood the need to talk about lot line adjustments, but the ultimate purpose of the variance is to accommodate the addition. He agreed with Ms. Wintzer that because they do know what the addition will look like, it is difficult to determine whether or not the variance is fair." He corrected do know to correct read, **do not know**.

MOTION: Board Member Fuegi moved to APPROVE the Minutes of November 28, 2017 as corrected. Board Member Wintzer seconded the motion.

VOTE: The motion passed.

PUBLIC COMMUNICATIONS

There were no comments.

STAFF/BOARD MEMBERS COMMUNICATIONS AND DISCLOSURES

Planning Director Erickson apologized for the Board having to move to the Executive Conference room due to a scheduling conflict in the Council Chambers.

REGULAR MEETING – Discussion, Public Hearing and Possible Action

1090 Norfolk Avenue – Applicant is requesting a variance to Section 15-2.2-3 (1)(2) (Side Yard Setback Exceptions) to reduce the side yard setback from 5 feet to 3 feet along a platted un-built right-of-way and Section 15-2.2-3(1)(2) Management Code (LMC) for the purpose of a chimney encroaching into a side yard setback. (Application PL-17-03735)

Planner Anya Grahn reviewed the application requesting two variances. The first is a side yard setback exception. Planner explained that corner lots are required to have a 5-foot side yard setback along the right-of-way. The applicant was requesting to reduce the setback to 3-feet. She stated that the Staff supported the variance request for reasons that she would explain later in her presentation.

Regarding the second request, Planner Grahn stated that typically on a lot that has a 5-foot setback, the chimney is allowed to encroach up to 2-feet into the setback for a width of the chimney being 5-feet in length. The applicant was requesting to put the chimney in the proposed 3-foot setback, creating a 1-foot setback from the right-of-way. The Staff could not support this variance because the proximity of the chimney to the right-of-way could impede future maintenance or expansion of utilities located in the right-of-way.

Planner Grahn noted that the property runs along Norfolk Avenue and 11th Street. The 11th Street right-of-way to the north of this property is unbuilt but not undeveloped. The road is not paved but there are both above ground and below ground utilities inside the right-of-way. There is a City staircase opposite the lot line of this property.

Planner Grahn reviewed the criteria of the variance. The first criteria is that 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. Planner Grahn stated that in this case, literal enforcement means that this lot would have to have a 5-foot increase side yard setback because it is on a corner lot. She explained that the purpose of the increased setback is provide a clear view of the

intersection, snow storage, and utilities. Right-of-ways are a critical infrastructure route even when there is not a paved street. Planner Grahn stated that the City currently does not have plans to develop the 11th Street right-of-way as a paved street on this location; however, future expansion or maintenance of utilities might require the City to excavate the street or do additional maintenance. Planner Grahn remarked that the 3-foot reduced side yard setback provides sufficient separation. It is the typical setback on a lot up to 37.5 feet in width, which is a lot and a half of the basic 25' x 75' lot. The Staff found that the reduced setback would not necessarily impact the standard lot in this case, because it is being treated the same as any other Old Town lot, with the exception of corner lots.

Planner Grahn explained that the Staff objected to the request for the chimney because if the City were to excavate into the right-of-way at a future time, the one foot of separation between the chimney and the right-of-way would not be sufficient to allow for necessary work, and it could impede and damage the chimney in the future.

Planner Grahn reported that the second criteria is that there are special circumstances attached to this property that do not generally apply to other properties in the same zone. She explained that the special circumstance for this property is that it is a standard size lot and a corner lot. The 5-foot setback would reduce the building pad from 1,045 square feet to 935 square feet. The footprint remains the same at 844 square feet regardless of the setback because that is tied to the lot size rather than setbacks. Planner Grahn remarked that when there is a building footprint there is articulation, setback changes, and other changes in the walls, etc. She pointed out that the increased setback makes it more difficult to achieve the 744 square feet of footprint. It also shrinks the house size from 19 feet down to 17 feet, which makes the pedestrian entrance more subordinate to the garage. The garage should not be a focal point in Old Town.

Planner Grahn stated that she looked at every corner lot in Old Town measuring 25' x 75'; as well as every lot measuring up to 37-1/2 feet. She reported that there were a total of 28 standard lots and six 1-1/2 lot combinations. Of those seven lots were developed with the 5-foot setback. Eight lots received variances for the side yard setback along the platted right-of-way. Twelve lots were incorrectly approved to develop with a 3-foot setback. Sevens lot have not yet been developed. Planner Grahn noted that her study included historic and non-historic houses. Because historic buildings that do not meet setbacks are valid comply structures, she actually looked at the addition to the historic house rather than the historic house itself.

Chair Gezelius thanked Planner Grahn for providing the information regarding precedence. It is important because some historic homes do not meet this

criteria. The rules have changed over time, but it was helpful to know what direction they went on other properties.

Planner Grahn stated that the Staff found that 58.8% of standard and 1-1/2 lot combinations have actually been approved either correctly, incorrectly, or through a variance to encroach up to 3-feet of the right-of way. She thought that was important to note because it is a substantial property right that was granted to other properties in the H zones; and it creates a hardship for this particular property.

Planner Grahn reiterated that the Staff did not support the variance request for the chimney because of how it could impede on future work in the right-of-way.

The third criteria is that granting the variance is essential to the enjoyment of a substantial property right possessed by other properties in the same zone. She reported that the Staff had done an analysis and found nine similar variances. Planner Grahn explained that the number changed from eight to nine for this criteria because 364 Park Avenue is a unique situation. It had a variance granted in 1997 and at the time it faced 4th Street. The owner wanted to add a garage and was granted a reduced side yard setback. Planner Grahn stated that granting the reduced side yard setback is essential to the property rights enjoyed by 58.8% of corner lot owners on lots up to 37-1/2 feet in the H Districts.

Again, the Staff felt that the chimney did not meet this criteria, primarily because it would not provide sufficient separation between the chimney and the right-of-way.

Planner Grahn reported that the fourth criteria is that the variance would not substantially affect the General Plan and will not be contrary to public interest. She remarked that in this case the General Plan promotes smaller house sizes in Old Town, and it talks about lot combinations. Planner Grahn noted that the applicant was not asking for anything more than what a standard Old Town has. They were only asking for a reduction of the setback that is typical for a corner lot. The footprint would remain at 844 square feet. The setbacks would be 3', the same as a typical 25' x 75' lot. It would not allow for a larger house than what is normally seen in the District.

For this criteria the Staff found that the chimney would be contrary to public interest because it impedes on development in the right-of-way.

Planner Grahn read Criteria 5, "The spirit of the Land Management Code is observed and substantial justice is done". Planner Grahn reiterated that the hardship comes from being a corner lot and the increased setback having an impact on the development.

For this criteria, the Staff once again found that the chimney could infringe on future development within the right-of-way.

Planner Grahn reviewed the applicant's survey to orient the Board with the property and the surrounding area. She indicated the location of the 3-foot setback, and noted that the house would have to be reduced by 2 feet if the variance is not granted. She pointed to the chimney that is one-foot from the right-of-way.

Board Member Franklin asked if the fencing was around both Lots 17 and 18. Planner Grahn answered yes. Assistant City Attorney McLean noted that the site plan says that 11th Street is vacated, but that is incorrect.

Planner Grahn reported that the applicant was working with Rocky Mountain Power to shift the power line. However, there were no plans to shift existing sewer and water lines that are buried below ground in the right-of-way.

Jamie Thomas, representing the applicant, thought the chimney was a great opportunity to add to the fabric of Old Town. He noted that most of the old chimneys were removed or lost through renovation and demolition. Mr. Thomas believed the chimney was an opportunity to contextually contribute to the fabric of Old Town. It could be brick and they could do it in the old style with tie joints that emulate the historic flavor.

Regarding the utility question, Mr. Thomas stated that the power lines trespass on Lot 17. It is a notorious trespass, and the owner has the burden to take care of it. Rocky Mountain Power gave them a contract and the owner will pay to relocate those lines anywhere in the right-of-way that works for the City and for Rocky Mountain Power. Mr. Thomas thought the utilities could be completely mitigated working with the Planning Department and the City Engineer. He stated that for all construction in Old Town, the contractor, owner, or representative signs an agreement with the City because it is an encroachment in the City right-of-way. The agreement says that the City will allow them to build driveways, hard surfaces, and to do landscaping from the property line to the curb, because it is the City right-of-way. Mr. Thomas stated that it is an instrument already in place and used on every project in Old Town. The owner signs the contract upfront, and a Certificate of Occupancy is not issued until the Engineering Department does a public improvement inspection.

Mr. Thomas thought it would be a shame to forgo an opportunity to do a nice chimney, and it would make for better space inside. They do not need the entire 3-feet; or even 2-feet. They were only asking for something that would allow them to place the fireplace someplace where it does not encroach on an already narrow house. He emphasized that they would be missing an opportunity to do something nice and visually favorable in Old Town.

Board Member Wintzer believed the Staff felt badly that this was overlooked. However, the owner and the architect also had the responsibility to know that a 5' setback is required on a corner lot. Ms. Wintzer thought the owner should bear the burden for the mistake. She views rights-of-ways as the citizens' property for open space and view corridors; as well as being needed for utilities. The only hardship she could see was one that was created by an error by all parties because they did not read the Code. Ms. Wintzer found it hard to find a case for hardship based on human error by the owner and his architect, and that the error was not caught by the City. She struggled with granting a variance for either variance request.

Board Member Franklin concurred with Board Member Wintzer. Having been a downhill neighbor of this home at one time and understanding the walkways and the utility easements, she thought it was important to have a little extra space in between the units in this area.

Board Member Robinson struggled with the precedent issue in terms of what has been granted in the past and what was approved in the past; regardless of whether or not they might have been mistakes. As he looked at the property and went up the stairway, he found various encroachments and variances that were made. Mr. Robinson stated that he was inclined to be in favor of the setback variance but not the fireplace variance. He agreed with the Staff's recommendation for not granting the variance for the fireplace; particularly given the changing nature of the utilities over time.

Board Member Fuegi did not see the fireplace as being a hardship. He understood that it would be nice for the owner to have more space in the house, but he would not consider it a hardship situation. Mr. Fuegi agreed with Board Member Robinson regarding the variance for the setback. He understood that the likelihood of this ever being a road was not high. He was conflicted because a lot of precedent has been set; however, if they approve this variance they would be setting a precedence for the remaining lots to come before the Board with the same argument. Mr. Fuegi could see a hardship for the setback issue because other property owners have been granted the same rights. He was leaning towards approving the setback variance, but not the variance for the fireplace.

Chair Gezelius concurred with Board Members Fuegi and Robinson. She did not think precedent was set by individual decisions. There are unique sites in town, which is why they have the Board of Adjustment and Staff review. Chair Gezelius stated that considering the majority of people who have similarly sized and located property have been granted a variance for whatever reason, she could justify the 2' sideyard setback. She also knows how difficult it is to live in a 19' house versus a 17' house. Extra room is required for a bed big enough to sleep in or a table that can seat six people. There are issues with every inch lost in a house in Old Town. Chair Gezelius stated that if the goal is to encourage

people to live in homes in Old Town, they have to allow the home to be big enough for a family. Otherwise, they will become nightly rentals. Chair Gezelius could not justify the fireplace setback. From her personal experience living in Old Town, and for public access and safety, losing two feet in the right-of-way is unnecessary considering the vast array of wall heating options that are available now that were not available in the past when people had to use large stone fireplaces or potbelly stoves. Since it is not a historic home, she stated that adding a feature like brick is unnecessary for enhancing the Historic District. Chair Gezelius concurred with the Staff recommendation to approve the setback variance and to deny the variance for the fireplace.

Board Member Fuegi clarified that if a road was there and the house would create visibility problems around the corner, he would not be in favor of the variance. However, given the fact that it is a stairway and a utility easement, he could find reason to support it. Chair Gezelius pointed out that there is other right-of-way running the length as well.

Chair Gezelius opened the public hearing.

There were no comments.

Chair Gezelius closed the public hearing.

MOTION: Board Member Fuegi moved to support the Staff recommendation to APPROVE the requested variance reducing the setback from 5' to 3'; and to DENY the requested variance for the chimney as recommended by the Staff, based on the Findings of Fact, Conclusions of Law and the Order. Board Member Robinson seconded the motion.

VOTE: The motion passed 3-2. Board Members Franklin and Wintzer voted against the motion.

Findings of Fact – 1090 Norfolk

1. The property is located at 1090 Norfolk Avenue in the Historic Residential (HR-1) District. It's legal description is Lot 17, Block 9 Snyders Addition to Park City.
2. The HR-1 zone is characterized by historic and contemporary homes and condominiums on one (1) to two (2) lot combinations.
3. The property is a Standard Lot measuring 25 feet by 75 feet. It is currently a vacant lot.
4. The property is vacant and therefore not designated as historic by the Historic Sites Inventory.
5. The property fronts Norfolk Avenue to the west and the 11th Street right-of-way to the north. No paved street exists in the 11th Street ROW, though there are City stairs on the north side of the ROW and underground utilities.
6. On June 6, 2017, the Planning Department received a Historic District Design

Review (HDDR) application for a new single-family dwelling to be constructed on a vacant lot at 1090 Norfolk Avenue; the application was approved on August 1, 2017.

7. On December 7, 2017, the Planning Department received a variance request for a reduced side yard setback from 5 feet to 3 feet on the Corner lot, abutting the 11th Street right-of-way to allow for a new single-family house with a chimney encroaching into the side yard.

8. 11th Street is a platted ROW, although it is inbuilt as a paved road west of Woodside Avenue. At this time, there are no plans to develop a paved street within the 11th Street ROW. There are already City stairs constructed on the north side of the ROW and utilities located within the ROW.

9. Land Management Code (LMC) 15-2.2-3(E) requires a minimum front yard setback of 10 feet; however, LMC 15-2.2-3(H)(2) allows for the minimum Side Yard that faces a side Street or platted Right-of-Way to be 5 feet.

10. On non-corner lots, the minimum side yard setback is 3 feet for a lot this size and lot width.

11. LMC 15-2.2-3(I)(2), allows for Chimneys not more than 5 feet wide projecting not more than 2 feet into the Side Yard to encroach into side yard setbacks measuring a minimum of 5 feet.

12. The HR-1 district requires a minimum 3-foot side yard setback for a single family house on a standard 25 foot by 75-foot lot. The HR-1 zone regulations permit a 19-foot-wide building pad on 25-foot-wide lots.

13. Application of the required setbacks would result in a 17-foot-wide building pad due to the required 5-foot side yard setback on a corner lot.

14. 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. The purpose of the increased side yard setback on Corner lots is to allow for a clear view of the intersection, yard area, and snow storage; Under the 2011 Traffic and Transportation Plan, the City does not anticipate further developing this right-of-way as a public paved street and a current public staircase is already on the north side of the platted ROW. Because of this, literal enforcement is not necessary to carry out the general purpose of the zoning code.

15. A 3-foot side yard setback along the 11th Street ROW provides sufficient separation between development on this property and any new or expanded development within the ROW. The reduced side yard setback of three feet (3') would not significantly impede the City from maintaining or expanding underground utilities or developing the ROW in the future.

16. Chimneys are not required elements and the reduced setback of the chimney to one foot (1') from the property line could impede future development in the ROW. The City Engineer finds that the location of the chimney could impede existing and future utilities within the ROW as the reduced setback for the chimney brings these two uses into closer proximity. Excavation to maintain or expand existing utilities within the ROW could cause soil erosion issues on this property at the time of construction. The reduced setback of the chimney also provides less separation between the house and any new development in or of the 11th Street ROW.

17. There are special circumstances attached to this Property that do not generally apply to other Properties in the same zone. This lot has a standard lot size of 25 feet by 75 feet. The typical side yard setbacks of 3 feet permit a maximum building width of 19 feet; however, the location of the platted, 11th Street ROW to the north requires a 5-foot side yard setback along the north property line for a corner lot such as this. The increased setback reduces the size of the Building Pad from 1,045 square feet to 935 square feet on Corner Lots, though the footprint remains the same.

18. The majority of Standard Lots that meet the definition of a Corner Lot have been permitted to maintain a 3-foot side yard setback from the ROW, instead of the required five foot (5') setback. Of the 29 Standard Old Town Lots in HR-1 abutting a ROW surveyed, 9 have received variances for a reduced side yard setback, 9 have been approved in error to have a 3-foot side yard setback, 4 have observed the required 5-foot setback, and 7 have not yet been developed or contain a historic house that has not been added on to. This deprives the Property of privileges granted other Properties in the same zone and creates a hardship for this property.

19. Granting the variance is essential to the enjoyment of a substantial Property right possessed by other Property in the same zone. The variance will not allow a greater building area or a larger structure than is currently allowed on any other 25 foot by 75-foot lot in the HR-1 district. All other requirements of the LMC will be met, including but not limited to setbacks, maximum heights, parking, utilities, footprint, and Historic District Design Guidelines. As 18 of 29 properties have been permitted to have a reduced side yard setback abutting a ROW, granting this variance permits essential enjoyment of a substantial Property right possessed by other Property in the same zone.

20. By allowing the chimney to encroach up to one foot (1') from the property line, there is insufficient separation between the chimney and any existing or future development in the ROW.

21. The variance will not substantially affect the General Plan and will not be contrary to public interest. The variance will not obstruct the use of the pedestrian staircase within the 11th Street ROW, the placement of utilities, nor will it utilize the City-owned property for private benefit. The General Plan encourages smaller, compact development on single lots that contribute to the overall character and integrity of the Mining Boom Era Residences Thematic District by reflecting the historic mass and scale.

22. The City Engineer believes that the one foot (1') separation of the chimney from the ROW due to the applicant's request for a reduced setback will impede the City's use of the ROW. Limiting the maintenance and/or expansion of utilities, snow storage, and the potential to develop 11th Street into a paved road are contrary to public interest

23. The spirit of the Land Management Code is observed and substantial justice is done. The reduced side yard setback along the 11th Street ROW will not allow a greater building area or larger structure than is currently allowed on any other 25 foot by 75-foot lot in the HR-1 district. All other requirements of the LMC requirements will be met, including but not limited to setbacks, maximum

footprints, maximum heights, parking, utilities, and compliance with the Historic District Design Guidelines. The ROW provides additional side yard setback and separation between buildings.

24. The spirit of the LMC is not observed by allowing the chimney a reduced setback of only one foot (1'). The LMC currently allows chimneys to encroach into five foot (5') side yard setbacks for a maximum of two feet (2'), leaving three feet (3') of separation between the chimney on the lot line. In this case, the property abuts a ROW and the City Engineer finds that the reduced setback of the chimney could infringe on future developments within this ROW.

25. Ability to construct and maintain utilities within the ROW will not be impacted by approving the variance to reduce the required side yard setback from five feet (5') to three feet (3') along the 11th Street ROW.

26. All findings in the Analysis section are incorporated herein.

Conclusion of Law – 1090 Norfolk

Variance Request 1: Reduced Side Yard Setback

1. Literal enforcement of the HR-1 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.

Variance Request 2: Chimney

1. Literal enforcement of the HR-1 District requirements for this property does not cause an unreasonable hardship that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are not 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.
6. It cannot 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 15-2.2-3(H)(2) to the required side yard setback for Corner Lots is hereby granted to reduce the setback from 5 feet to 3 feet. The variance run with the land

Board of Adjustment Meeting
February 27, 2018

2. A variance to LMC Section 15-2.2-3(1)(2) to allow a Chimney not more than 5 feet wide projecting not more than 2 feet into the Side Yard is hereby denied.

Chair Gezelius asked about future agendas. Planner Grahn reported on a request from 341 Ontario, which the BOA heard in June and continued to a date uncertain. The Staff has been talking with the applicant; however, a date had not been set as to when it would come back to the Board of Adjustment. She anticipated possibly in April or May.

Chair Gezelius adjourned the meeting at 5:40 p.m.

Approved by _____
Ruth Gezelius, Chair
Board of Adjustment

APPROVED 4.17.18