

The Regular Meeting of the
Brian Head Planning Commission
Town Hall - 56 North Highway 143
Brian Head, UT 84719
Zoom Meetings ([click here](#))
Zoom Meeting ID# 825 1947 1803
TUESDAY, November 7, 2023 @ 1:00 PM

AGENDA

- A. CALL TO ORDER 1:00PM**
B. PLEDGE OF ALLEGIANCE
C. DISCLOSURES
- D. PUBLIC INPUT/ REPORTS (Limited to three (3) minutes) Non-Agenda Items**
- E. AGENDA ITEMS:**
- 1. ADMINISTRATIVE ACTION – Desing Review for Multi-family Dwelling 178 W Zion View Drive.** Lester Ross Town Planning and Building Official. The Commission will review the Design Review for the proposed multi-family dwelling and single-family home for lot 9 in the Crystal Aire Subdivision located at 178 W Zion View Drive.
 - 2. DISCUSSION – Basics of Utah Land Use Regulation Law Training.** Lester Ross Town Planning and Building Official. The Commission will view Part One of the Basics of Utah land Use Regulation Law Presented by the Utah Land Use Institute on April 7th 2023 and afterwards hold a discussion on the training.
- F. ADJOURNMENT**

Date: November 3, 2023

Available to Board Members as per Ordinance No, 11-003 authorizes public bodies, including the Town, to establish written procedures governing the calling and holding of electronic meetings at which one or more members of the Council may participate by means of a telephonic or telecommunications conference. In compliance with the Americans with Disabilities Act, persons needing auxiliary communications aids and services for this meeting should call Brian Head Town Hall @ (435) 677-2029 at least three days in advance of the meeting.

CERTIFICATE OF POSTING

I hereby certify that I have posted copies of this agenda in two public and conspicuous places within the Town Limits of Brian Head; to wit, Town Hall and Post Office and have posted such copy on the Utah Meeting Notice Website and have caused a copy of this notice to be delivered to the Daily Spectrum, a newspaper of general circulation.

Nancy Leigh, Town Clerk



ITEM:

DESIGN REVIEW FOR PETTY DUPLEX 178 W ZION VIEW DRIVE

AUTHOR: Lester Ross
DEPARTMENT: Admin
DATE: November 7, 2023
TYPE OF ITEM: Administrative Action

SUMMARY:

The commission will be reviewing a proposed multi-family dwelling and single-family home that will be built on lot 9 in the Crystal Aire Subdivision located at 178 W Zion View Drive

BACKGROUND:

On October 5, 2023, Helterman Homes and Designers submitted a building permit application for Katherine and Brian Petty for a multi-family dwelling and single-family dwelling that they would like to construct on Lot 9 in the Crystal Aire Subdivision located at 178 W Zion View Dr.

ANALYSIS:

Staff has reviewed the plans for a 2555 sq foot multi-family dwelling that will have two dwelling units and two garages along with a

Standards for Review:

- a. Town General Plan:
 - a. The use follows the General plan for this area.
- b. Zoning Regulations and other relevant sections:
 - a. This lot is zoned R 2 Medium Density Residential. R 2 allows for 8 dwellings per acre. The lot is .77 acres that would allow for 6 dwellings. Their plans are to build 3 dwellings units on the lot.
- c. Applicable Building codes
 - a. The plans have been reviewed for code compliance.
- d. General Design standards of Chapter 12:
 - a. The overall look and feel of the project fit into the design guidelines found in Chapter 12 of the land management code. All outside lighting will need to be shielded and night sky complaint.
- e. Other applicable laws:
 - a. They will be installing a fire suppression system due to the length of the driveway. The driveway has been widened by the duplex and the end of the driveway to allow vehicles to pass and turn around at the end of the driveway and was approved by Dan Benson when they applied for their grading permit.
- f. Desing is sensitive to the constraints of topography, soil types, geologic hazards, watercourses and floodplains, visual impacts, and preservation of views:
 - a. The architect has worked with the topography of the property to best place the dwelling units and the driveway to maximize open space and view on the lot.
- g. Utilities and services shall be available and adequate to meet the needs of the structure and uses:

- a. They will have to tie into the main line to get the water flow that they will need for the units and the Fire system. There is sewer, gas and power on the property.

STAFF RECOMMENDATION:

Staff recommends that the Commission approve the proposed design review for the multi-family dwelling and single-family home located at 178 W Zion View Drive lot 9 in the Crystal Aire Subdivision

PROPOSED MOTION:

I move to approve the proposed design for the multi-family dwelling and single-family home proposed for 178 W Zion View Drive lot 9 Crystal Aire Subdivision.

ATTACHMENTS:

A – Site and building plans

B – Exterior Design Choices

9/13/2023 7:57:29 PM Autodesk Docs://Petty Brian Head Residences/2022-05 PETTY HOUSE - ARCH - V22.rvt
ALL IDEAS, DESIGNS, ARRANGEMENTS AND PLANS INDICATED OR REPRESENTED BY THESE DRAWINGS ARE OWNED BY AND THE PROPERTY OF AJC ARCHITECTS PC, AND WERE CREATED, EVOLVED AND DEVELOPED FOR USE ON AND IN CONNECTION WITH THE SPECIFIED PROJECT. NONE OF THE IDEAS, DESIGNS, ARRANGEMENTS OR PLANS SHALL BE USED BY OR DISCLOSED TO ANY PERSON, FIRM, OR CORPORATION FOR ANY PURPOSE WITHOUT THE WRITTEN CONSENT OF AJC ARCHITECTS. ANY REUSE, REPRODUCTION, OR DISCLOSURE OF THESE DRAWINGS WITHOUT THE WRITTEN CONSENT OF AJC ARCHITECTS IS A VIOLATION OF U.S. PATENT, COPYRIGHT, AND TRADE SECRET LAWS, AND MAY BE SUBJECT TO PROSECUTION UNDER FEDERAL AND STATE LAWS. ANY VIOLATION OF THESE LAWS MAY CONSTITUTE TRADE SECRET MISAPPROPRIATION IN VIOLATION OF 18 U.S.C. SEC. 1836 AND OTHER LAWS. WARNING: REPRODUCTION HEREOF IS A CRIMINAL OFFENSE UNDER 18 U.S.C. SEC. 1836. UNAUTHORIZED DISCLOSURE MAY CONSTITUTE TRADE SECRET MISAPPROPRIATION IN VIOLATION OF 18 U.S.C. SEC. 1836 AND OTHER LAWS.

VICINITY MAP:



RENDERING:



PETTY RESIDENCE

PERMIT SET

178 W ZION VIEW BRIAN HEAD UT 84719

OWNER KATE & BRIAN PETTY
PHONE: 714.335.5947
EMAIL: PETTYAPPS@GMAIL.COM

ARCHITECTURAL ajc Architects
703 EAST 1700 SOUTH
SALT LAKE CITY, UT 84105
PHONE: 801.466.8818
EMAIL: JHEPPLER@AJCARCHITECTS.COM
NAME: JUSTIN HEPLER

CIVIL GREAT BASIN ENGINEERING
5746 S 1475 E #200, S. OGDEN, UT 84403
PHONE: 801.689.8420
EMAIL: JZAUGG@GREATBASINENG.COM
NAME: JIM ZAUG

STRUCTURAL MJ STRUCTURAL
5673 REDWOOD ROAD STE 22,
SALT LAKE CITY, UT 84123
PHONE: 801.905.1097
EMAIL: BHAYWOOD@MJSTRUCTURALENGINEERS.COM
NAME: BRENDON HAYWOOD

MECHANICAL Design Build by General Contractor

ELECTRICAL Design Build by General Contractor

LANDSCAPE Design Build by General Contractor

ARCHITECT / CONSULTANT

NOT FOR
CONSTRUCTION

PROJECT DESCRIPTION
PETTY RESIDENCE

**178 W ZION VIEW BRIAN HEAD UT
84719**

SHEET NAME:
COVER SHEET

REVISIONS
MARK DATE DESCRIPTION

ISSUE DATE: **SEPTEMBER 13 2023**
ISSUE TYPE: **PERMIT SET**
DRAWN BY: **KS**
CHECKED BY: **K. RIGBY**
PROJECT#: **22-05**

SHEET NUMBER:

G000



1 1/2" = 1'-0"



AI $3'' = 1'-0''$



1/16" = 1'-0", DWG REF: AD201

5

SEE SHEET AG000 FOR ABBREVIATIONS, SYMBOLS, & LEGENDS

CONTRACTOR / SUBCONTRACTOR SHALL VERIFY ALL DIMENSIONS AND CONDITIONS BEFORE BEGINNING WORK, AND SHALL REPORT TO THE ARCHITECT ANY ERRORS, INCONSISTENCIES OR OMISSIONS BEFORE BEGINNING WORK. SEE GENERAL NOTES AND SPECIFICATIONS.

2015 IECC
2021 IRC W/ UTAH STATE AMENDMENTS
2021 IFGC
2020 NEC
RESIDENTIAL SPRINKLERS
NFPA 13D

ZONE: R-2 MEDIUM DENSITY RESIDENTIAL

MULTI-FAMILY DWELLINGS (2 OR MORE DWELLING UNITS PER STRUCTURE, INCLUDING TOWNHOMES). NIGHTLY RENTAL OF DWELLING UNITS, SUBJECT TO A BUSINESS LICENSE. PROPERTY MANAGEMENT.

MIN LOT AREA: TWENTY-ONE THOUSAND SEVEN HUNDRED EIGHTY (21,780) SQRF
MIN FRONTAGE: 45'

UP TO 35' IN HEIGHT

- FRONT: 25'** AN ADMINISTRATIVE EXCEPTION MAY BE GRANTED FOR THE GARAGE ONLY WHEN ALL OF THE FOLLOWING APPLY:
- I. FRONT YARD SETBACK EXCEEDS 20% SLOPE (11.3 DEGREES);
 - II. NO HABITABLE SPACE WITHIN THE SETBACK AREA;
 - III. REQUIRED OFF-STREET PARKING IS SATISFIED AND MAINTAINED IN THE GARAGE OR THE LOT;
 - IV. THE ROOF SHEDS SNOW AWAY FROM THE PUBLIC RIGHT OF WAY; AND
 - V. ADEQUATE SNOW STORAGE ON THE LOT.
- UNDER NO CIRCUMSTANCES WILL THE SETBACK BE LESS THAN 5'

- **SIDE: 20'**
- **REAR: 20'**

FOR BUILDINGS OVER 35' IN HEIGHT:

- SIDE: 30'
- REAR: 30'
- FRONT: 25'

SETBACK EXCEPTION:

- DRIVEWAYS AND WALKWAYS;
- **ROOF EAVES, PROVIDED THEY ENCROACH NO MORE THAN 5' INTO THE REQUIRED SETBACK**
- DECKS AND EXTERIOR STAIRCASES ATTACHED TO THE RESIDENTIAL STRUCTURE MAY BE PERMITTED ON A CASE-BY-CASE BASIS AFTER WRITTEN APPROVAL OF THE TOWN MANAGER OR DESIGNEE. FOLLOWING REVIEW, THE DECK OR EXTERIOR STAIRCASE MUST BE UNCOVERED OTHER THAN BY A PERMITTED ROOF OVERHANG OR EAVE OF THE RESIDENTIAL STRUCTURE, AND THE **DECK OR EXTERIOR STAIRCASE MAY ENCROACH NO MORE THAN 4' INTO THE REQUIRED SETBACK.**
- DECKS OR WALKWAYS LESS THAN 30" ABOVE GRADE MAY STAND WITHIN THE INNERMOST ONE-THIRD (1/3) OF THE SETBACK.
- MAXIMUM HEIGHT: FIFTY (50') FEET FOR PEAKED ROOFS (BUT 35' IF SETBACKS ARE MAINTEINED), THIRTY-FIVE (35') FOR FLAT ROOFS.

MAXIMUM BUILDING COVERAGE: 40% OF THE LOT AREA.

MAXIMUM DENSITY: 8 UNITS PER ACRE (OR A FRACTION THEREOF) FOR MULTI-FAMILY DWELLINGS, INCLUDING CONSTRAINTS OF THIS TITLE RELATING TO HEIGHT, SETBACK, LANDSCAPING, LOT DISTURBANCE, PARKING, ETC.

MINIMUM LANDSCAPING: 25% OF THE LOT SHALL BE LANDSCAPED PER SECTION 9-12-5 OF THIS TITLE, WITH EVERY EFFORT TO PRESERVE EXISTING VEGETATION. REMAINING UNDEVELOPED AREA SHALL BE LANDSCAPED AS PER SECTION 9-12-5 OF THIS TITLE

PARKING: IN ACCORDANCE WITH SECTION 9-12-15 OF THIS TITLE
UNDISTURBED LOT AREA: REMAINING UNDEVELOPED AREA SHALL BE LANDSCAPED AS
PER
SECTION 9-12-5 OF THIS TITLE

ONE PIECE OF HEAVY EQUIPMENT ALONG WITH TWO HEAVY EQUIPMENT ATTACHMENTS MAY BE KEPT ON PREMISES FOR USES SUCH AS SNOW REMOVAL OR LIGHT EXCAVATION. THE EQUIPMENT SHALL BE PARKED IN A PLACE AND MANNER SO AS TO BE REASONABLY SCREENED FROM THE VIEW OF THE PUBLIC RIGHT OF WAY. ADDITIONAL EQUIPMENT USED FOR CONSTRUCTION MAY BE PARKED AT THE SITE WHEN AUTHORIZED BY A CURRENT BUILDING PERMIT OR OTHERWISE AUTHORIZED BY THE TOWN.

LOT SIZE:
.77 ACRE (33,541 SF)
COVERAGE ALLOWED 40% = 13,416 SF

MAIN HOUSE + GARAGE= 1,720 SF
CONDOS + GARAGE = 2,571 SF
TOTAL COVERAGE = 4,291 SF < 13,416 SF

BUILDING SF
HOUSE:
BASEMENT/LEVEL 1: 730 SF
LEVEL 2: 1,670 SF
= 2,400 SF
GARAGE: 790 SF

DUPLEX:
BASEMENT/LEVEL 1: 1,465 SF
LEVEL 2: 1,925 SF
= 3,390 SF
GARAGE: 630 SF

ROOF OVERHANG PAST OFFSET ALL LESS THAN 5'

DECK OVERHANG PAST OFFSET ALL LESS THAN 4'



PROJECT DESCRIPTION

PETTY RESIDENCE

178 W ZION VIEW BRIAN HEAD UT
84719

SHEET NAME:

ZONING SUMMARY

REVISIONS

MARK	DATE	DESCRIPTION
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ISSUE DATE: **APRIL 30 2023**

ISSUE TYPE: **PERMIT SET**

DRAWN BY: **KS**

CHECKED BY: **K. RIGBY**
PROJECT#: **22-05**

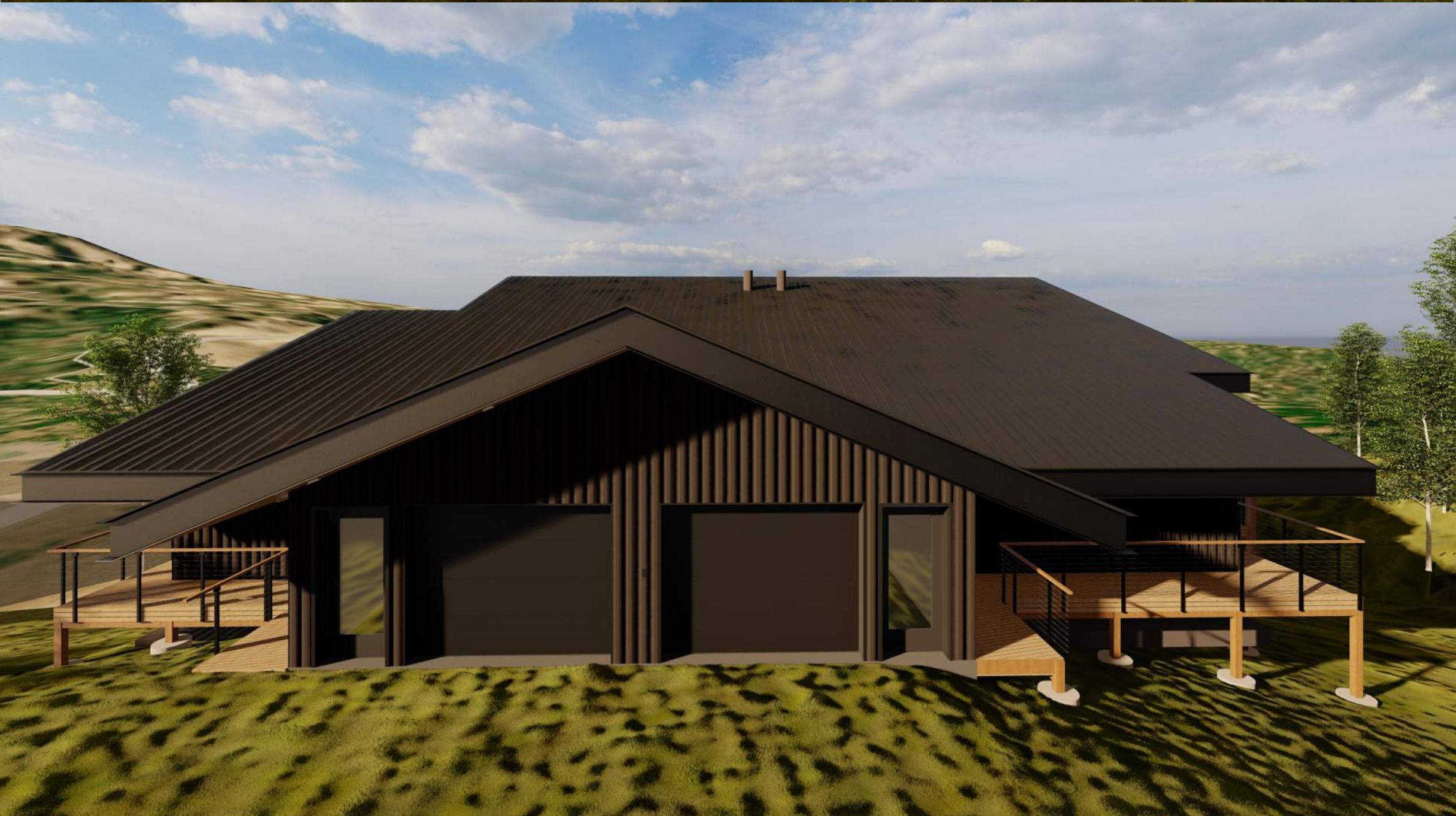
SHEET NUMBER:

G002

9/13/2023 7:57:36 PM Autodesk Docs://Petty Brian Head Residences/2022-05 Petty House - ARCH - V22.rvt
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HOUSE



DUPLEX

ARCHITECT / CONSULTANT

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CONSTRUCTION

PROJECT DESCRIPTION
PETTY RESIDENCE

178 W ZION VIEW BRIAN HEAD UT
84719

SHEET NAME:
PERSPECTIVES

REVISIONS		
MARK	DATE	DESCRIPTION

ISSUE DATE: **APRIL 30 2023**
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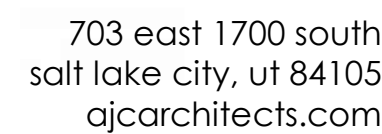
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G004

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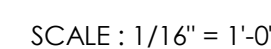
PETTY RESIDENCE

ARCHITECTURAL SITE PLAN

MARK	DATE	DESCRIPTION
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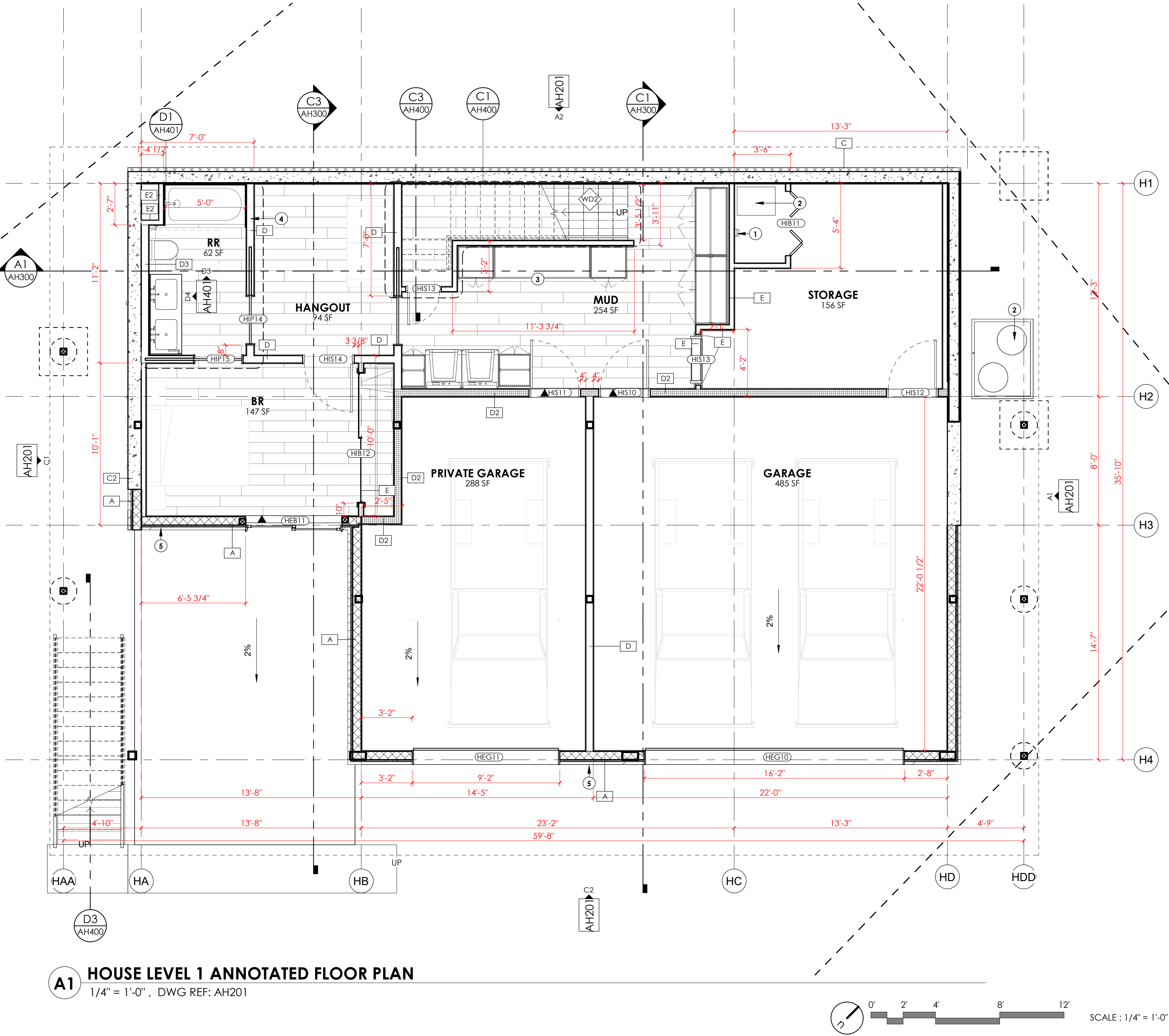
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AS101



9/13/2023 7:56:50 PM Autodesk Docs://Petty Brian Head Residences/2022-05 PETTY HOUSE - ARCH - V22.rvt
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A1 HOUSE LEVEL 1 ANNOTATED FLOOR PLAN
1/4" = 1'-0" , DWG REF: AH201



GENERAL NOTES:

SEE SHEET GH001 FOR DRAWING INDEX AND GENERAL NOTES
SEE SHEET AG000 FOR ABBREVIATIONS, SYMBOLS, & LEGENDS
DO NOT SCALE DRAWINGS.
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FINISH NOTES

FIELD VERIFY ALL DIMENSIONS BEFORE FABRICATION OF MILLWORK.
COORDINATE ALL MILLWORK WITH APPLIANCES BEFORE FABRICATION.
SEE INTERIOR ELEVATION SHEETS FOR ALL WALL TILE PATTERNS - COORDINATE PATTERN LAYOUTS WITH ARCHITECT PRIOR TO CUTTING AND PLACEMENT OF ANY & ALL TILE.
PROVIDE A SMOOTH TRANSITION AT ALL CHANGES IN FLOOR MATERIAL.
ALL GYP. BD. CEILINGS SHALL BE PAINTED AS INDICATED IN FINISH LEGEND
ALL EXPOSED NON CONCRETE COLUMNS TO BE PAINTED TO MATCH ADJACENT WALLS.
EXPOSED METAL HANDRAILS, GUARDRAILS, HANDRAIL/GUARDRAIL SUPPORT SYSTEMS, STAIR STRUCTURE, ETC NOT NOTED AS STAINLESS STEEL TO BE PAINTED.
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RATED WALL CONDITIONS SHALL REMAIN 5/8" TYPE-X GYP. BOARD. GYP. BOARD, BOTH RATED AND NON-RATED, SHALL BE PAINTED WHERE EXPOSED - REFER TO FINISH LEGEND.
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PROVIDE SOLID BLOCKING/BACKING FOR ALL WALL MOUNTED ACCESSORIES.
FOR ALL FINISH MATERIALS SEE FINISH LEGEND ON SHEET SHEET A620
FOR ACCESSORIES SEE SCHEDULE ON SHEET A620. COORDINATE ALL FIXTURES WITH MECHANICAL, PLUMBING, AND ELECTRICAL AS REQUIRED.
WALL, FLOOR, BASE AND CEILING KEYNOTE: THIS SYMBOL, WHEN ATTACHED TO A WALL, SHALL INDICATE THIS FINISH FOR THE ENTIRE LENGTH OF WALL FROM ONE INTERSECTION TO THE NEXT AND NOT BE TERMINATED BY WINDOWS OR DOORS, U.N.O.
SEE SHEET A620 FOR FINISH LEGEND.

- FLUSH METAL THRESHOLD —●— SEE B1/A011
SLOPED METAL THRESHOLD —○— SEE A1/A011
EXTERIOR METAL THRESHOLD —▲— SEE C1/A011

FLOOR FINISH SYMBOLS

LARGE FORMAT CERAMIC TILE, THIN SET	
CERAMIC MOSAIC TILE SLOPE TO DRAIN	
SEALED CONCRETE - SEE FINISH SCHEDULE	
TRX DECKING - SEE FINISH SCHEDULE	
HARD WOOD TREAD - SEE FINISH SCHEDULE	

KEYED NOTES:

- 1 TANKLESS WATER HEATER, SEE SPECIFICATIONS.
2 HEAT RECOVERY VENTILATOR (HRV)
3 BUILT-IN CASEWORK, REFER TO ENLARGED PLANS AND ELEVATIONS.
4 TV BY OWNER, PROVIDE BLOCKING IN WALL, SEE POWER PLAN
5 HOSE BIB.

ajc architects
703 east 1700 south
salt lake city, ut 84105
ajcarchitects.com

ARCHITECT / CONSULTANT

**NOT FOR
CONSTRUCTION**

PROJECT DESCRIPTION
PETTY RESIDENCE

**178 W ZION VIEW BRIAN HEAD UT
84719**

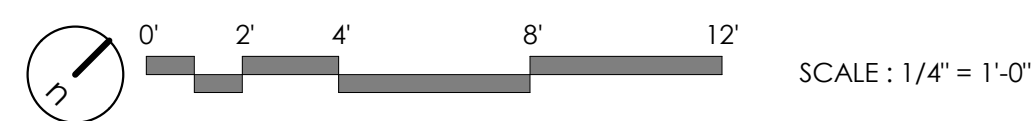
SHEET NAME:
**HOUSE LEVEL 1 -
ANNOTATED FLOOR
PLAN**

REVISIONS
MARK DATE DESCRIPTION

ISSUE DATE: **APRIL 30 2023**
ISSUE TYPE: **PERMIT SET**
DRAWN BY: **KS**
CHECKED BY: **K. RIGBY**
PROJECT#: **22-05**

SHEET NUMBER:

AH110



FINISH NOTES

WALL, FLOOR, BASE AND CEILING KEYNOTE: THIS SYMBOL, WHEN ATTACHED TO A WALL, SHALL INDICATE THIS FINISH FOR THE ENTIRE LENGTH OF WALL FROM ONE INTERSECTION TO THE NEXT AND NOT BE TERMINATED BY WINDOWS OR DOORS, U.N.O.

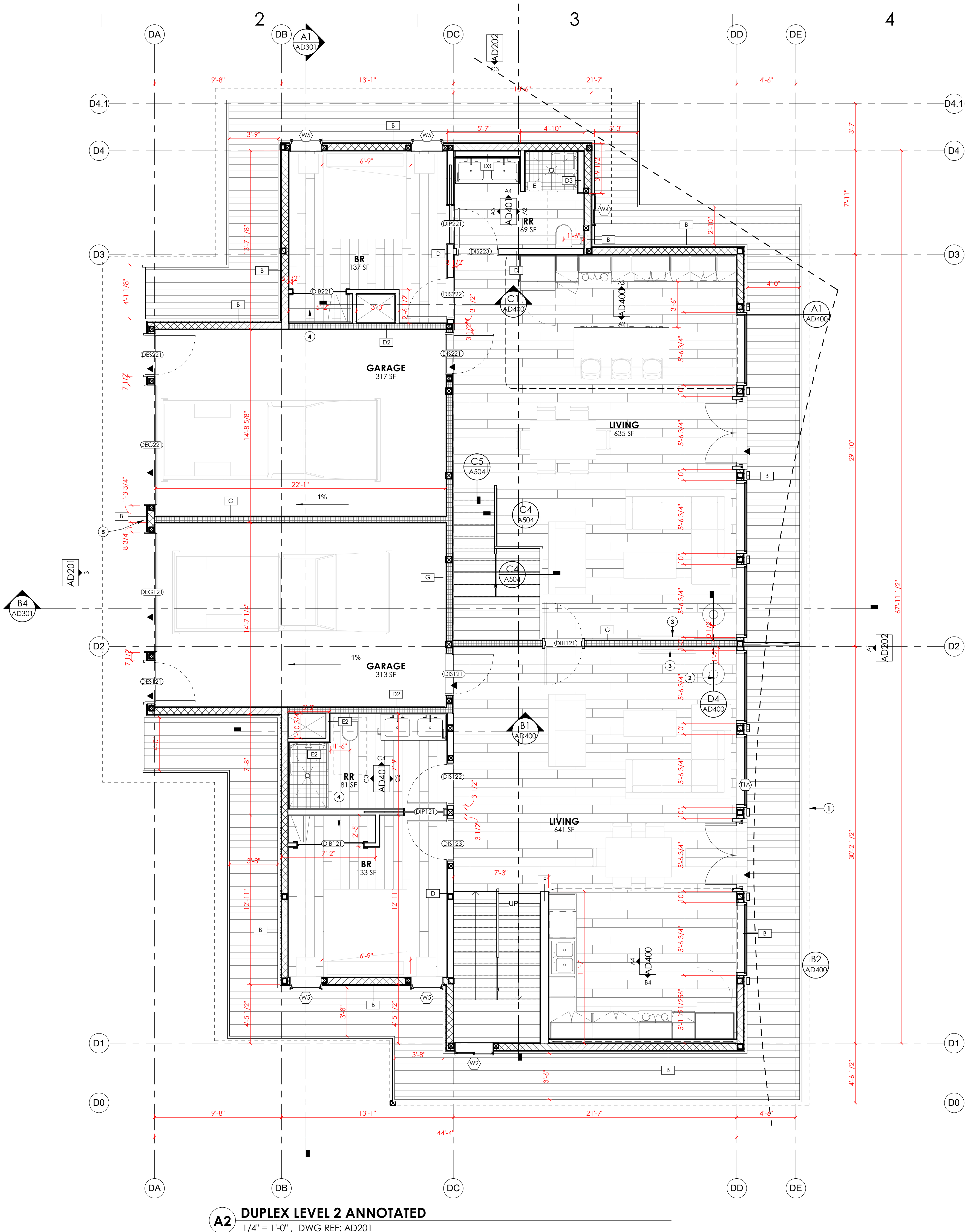
SEE SHEET A620 FOR FINISH LEGEND.

- ## FLOOR FINISH SYMBOLS

KEYED NOTES:

- # AD110

9/13/2023 8:02:44 PM Autodesk Docs://Petty Brian Head Residences/2022-05 PETTY HOUSE - ARCH - V22.mt
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GENERAL NOTES:

SEE SHEET GD001 FOR DRAWING INDEX AND GENERAL NOTES
SEE SHEET AG000 FOR ABBREVIATIONS, SYMBOLS, & LEGENDS
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- FLUSH METAL THRESHOLD —●— SEE B1/A011
SLOPED METAL THRESHOLD —○— SEE A1/A011
EXTERIOR METAL THRESHOLD —▲— SEE C1/A011

FLOOR FINISH SYMBOLS

LARGE FORMAT CERAMIC TILE, THIN SET	
CERAMIC MOSAIC TILE SLOPE TO DRAIN	
SEALED CONCRETE - SEE FINISH SCHEDULE	
TRX DECKING - SEE FINISH SCHEDULE	
HARD WOOD TREAD - SEE FINISH SCHEDULE	

KEYED NOTES:

- 1 LINE OF ROOF OVERHANG ABOVE
2 SUSPENDED ROOF ATTACHED FIRE PLACE
3 TV BY OWNER, PROVIDE BLOCKING IN WALL, SEE POWER PLAN
4 CLOSE SHELF
5 HOSE BIB.
SCALE: 1/4" = 1'-0"

ajc architects
703 east 1700 south
salt lake city, ut 84105
ajcarchitects.com

ARCHITECT / CONSULTANT

NOT FOR
CONSTRUCTION

PROJECT DESCRIPTION
PETTY DUPLEX

178 W ZION VIEW BRIAN HEAD UT
84719

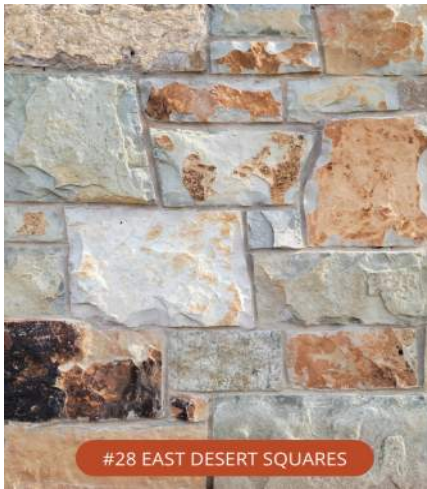
SHEET NAME:
**DUPLEX LEVEL 2 -
ANNOTATED FLOOR
PLAN**

REVISIONS
MARK DATE DESCRIPTION

ISSUE DATE: **APRIL 30 2023**
ISSUE TYPE: **PERMIT SET**
DRAWN BY: **KS**
CHECKED BY: **K. RIGBY**
PROJECT#: **22-05**

SHEET NUMBER:

AD121



Stone

Type: Real Stone Veneer
Color/Style: #28 East Desert Squares



Matte Black

Roofing

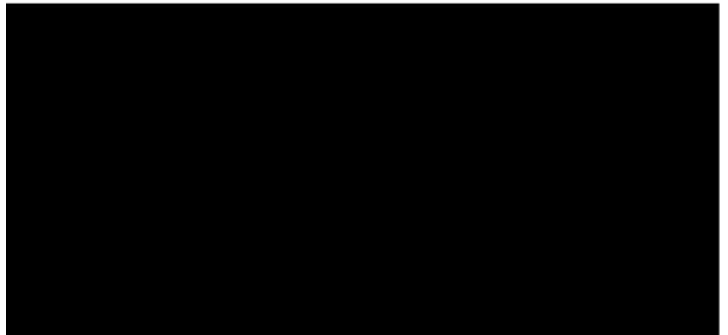
Style: Skyline Roofing
Color: Matte Black



Chestnut Brown

Siding

Nu-wave Corrugated
Color: Chestnut Brown



Matte Black

Facia

Style: Flat Metal
Color: Matte Black



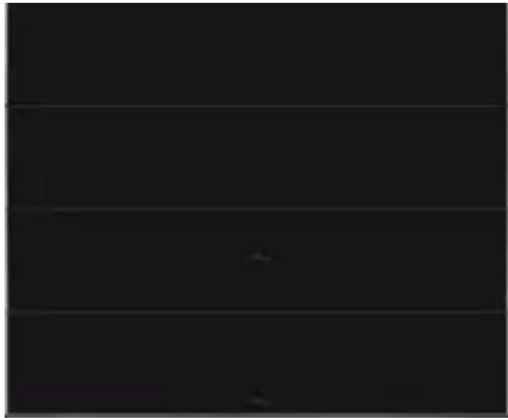
Soffit

Brand: Sagirev - 6" V groove
Style/Color: #82 Desert Oak



Exposed Wood

Stain - Minwax Wood Finish
Color: Walnut



FLUSH PANEL

Garage Door

Brand: Clopay
Style: Flush Panel
Color: Black



Black

Windows

Brand: Anderson
Type/Style: 400 Series
Color: Black



Exterior Lighting

Brand: Eglo
Style: Venecia 17-7/8" Tall Integrated LED Outdoor Sconce
Color: Matte Black

Havana Gold

Transcend® (Premium Tropicals)

PROUD SPONSOR
2023



Decking

Brand: Trex
Style: Transcend
Color: Havana Gold



Porch Railings

Brand: OrePac
Style: RailFX
Color: Black Posts, Wood Topper, Stainless Steel Cable



Chimney Cap

Brand: TBD
Type/Style: Low Profile
Color: Matte Black



1

Continuing Education Requirements:

- Planning Commissioners: Sign Roster, Pick up generic certificate. We will keep a record of your attendance.
- Attorneys: In Person: Sign Roster. Pick up generic certificate. We will report your CLE hours to the Utah Bar within 30 days.
- Planners: AICP through its website, as usual.
- Real Estate: In Person
 - Sign Roster when arriving at the seminar.
 - Sign Roster again during the break.
 - Bring Evaluation Form to the registration desk after the session. Fill out certificate form. Get signature from ULUI today. Otherwise, no credit.

2

The Office of the Property Rights Ombudsman has provided funding for this training program from the 1% surcharge on all building permits in the State of Utah.

3

Programs of the Utah Land Use Institute are funded, in part, by generous grants from the

S. J. and Jessie E. Quinney Foundation.

4

We appreciate our co-sponsors:

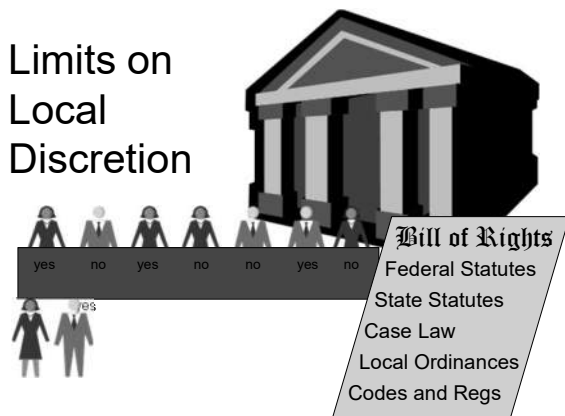
- The Utah League of Cities and Towns
- The Utah Chapter of the American Planning Association
- The Salt Lake Board of Realtors
- Home Builders of Utah
- Real Property Section, Utah State Bar

5

We will be quoting Ground Rules in this seminar – copies are available at Amazon.com

6

Limits on Local Discretion

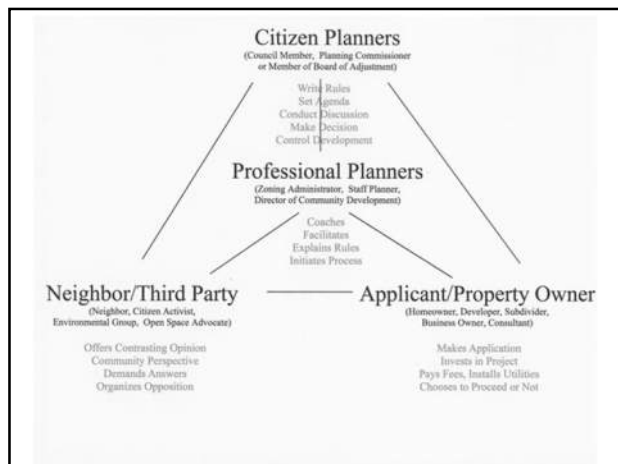


7

Agenda:

- Legislative Acts - Generally
 - Broad Issues of Public Policy
 - Initiative/Referendum
- Administrative Acts - Generally
 - Applying the Ordinance to an Application
 - Vested Rights
 - Findings of Fact
 - Public Clamor
 - Interpreting an Ordinance
 - Mandatory Ordinances
- Specific Administrative Acts
 - Conditional Uses
 - Non-Conformities
 - Conditions and Exactions on Development
- Appeals from Land Use Decisions
 - Appeals - Variances
- Land Use Ethics and Best Practices

8



9

Legislative Act

- General Plan
- Annexation
- Zoning Ordinance
- Zoning Map
- Development Agreement?
- Planned Unit Dev.?

1. "Reasonably Debatable" that the decision could advance the purposes of LUDMA. (General Welfare).
2. Not illegal under state or federal law or rule.

Administrative Act

- Subdivision
- Conditional Use
- Site Plan Approval
- Building Permit
- Appeal Authority
- Variances

1. Supported by Substantial Evidence in the Record.
2. Consistent with relevant ordinances and laws, including vested rights.

10

LEGISLATIVE DISCRETION:

"If an ordinance could promote the general welfare; or even if it is reasonably debatable that it is in the interest of the general welfare, we will uphold it."

Smith Investment Co. v. Sandy (1998)

11

Legislative Acts

The Planning Commission recommends.

The elected legislative body decides.

12

ADMINISTRATIVE DISCRETION

“An administrative land use decision will be upheld if it is supported by substantial evidence on the record and is otherwise legal.”

13

Vested Rights

An applicant is entitled to approval of a land use application if the application conforms to the requirements of the applicable land use regulations, land use decisions, and development standards in effect when the applicant submits a complete application and pays application fees, UNLESS

14

Vested Rights

(i) the land use authority, on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the application and specifies the compelling, countervailing public interest in writing; or

15

Vested Rights

(ii) in the manner provided by local ordinance and before the applicant submits the application, the municipality formally initiates proceedings to amend the municipality's land use regulations in a manner that would prohibit approval of the application as submitted.

16

ADMINISTRATIVE DECISIONS

The Land Use Authority must thus determine whether, legally and factually, the application complies. If it does, approve the application. If it does not, deny. In either case, explain why on the record.

17

Legislators Acting Administratively

A land use decision of a land use authority is an administrative act, even if the land use authority is the legislative body.
Utah Code Ann. 10-9a-306; 17-27a-308

18

Conditional Use Permits

U.C.A. 10-9a-507(2)(a) - Conditional uses.

A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.

19

STANDARDS IN THE ORDINANCE

The analysis therefore includes at least three questions:

1. What are the reasonably anticipated detrimental effects of this use?
2. Can they be reasonably mitigated?
3. If so, what reasonable conditions does the ordinance allow to be imposed?

20

SUBSTANTIAL EVIDENCE

“Substantial Evidence” means evidence that (1) is beyond a scintilla and (2) a reasonable mind would accept as adequate to support a conclusion.

Utah Code Ann. 10-9a-103(67)

21

SUBSTANTIAL EVIDENCE

Evidence is:

- Relevant
- Independent
- Expert or otherwise credible

22

Findings of Fact

. . . it was the Council’s responsibility to define the basis for its decision, not the district court’s. . . Simply stated, if a city council is going to sit as an adjudicative body, it needs to produce findings of fact capable of review on appeal. *McElhaney v. Moab*, 2017 UT 65

23

Public Clamor

Indeed, there is almost uniform public clamor when any mental health facility, halfway house, jail or prison is proposed. The public realizes the need for such facilities, but they should always be located somewhere else Citizen opposition is a consideration which must be weighed, but cannot be the sole basis for the decision to deny an application. *Davis County v. Clearfield*, 756 P.2d 704

24

Uintah Mtn RTC v. Duchesne County

2005 UT App 565

County's conditional use denial based on economic viability invalid because the applicable criteria in the county code did not include a test for economic viability.

The County's decision to grant a similar permit in 1997 was used to show the current denial was arbitrary.

Public clamor not a sufficient reason for denial

25

Interpretation of Ordinance

A land use authority shall apply the plain language of land use regulations.

If a land use regulation does not plainly restrict a land use application, the land use authority shall interpret and apply the land use regulation to favor the land use application.

Utah Code Ann. 10-9a-306; 17-27a-308

26

Interpretation of Ordinance

The best evidence of the ordinance's intent is the plain language of the ordinance itself. We presume that the city council was deliberate in its choice of words and used each term advisedly and in accordance with its ordinary meaning. Where an ordinance's language is unambiguous and provides a workable result, we need not resort to other interpretive tools, and our analysis ends. *2 Ton Plumbing v. Thorgaard*, 2015 UT 29

27

Nonconforming Uses

U.C.A. 10-9a-103(43) – Nonconforming Use.

A use which:

- 1) Was legally established originally, in conformance with the ordinance.
- 2) Is not legal under the current ordinance, but
- 3) Has been maintained continuously since it became nonconforming. (No abandonment for a year or more).

28

Interpretation of Ordinance

"Because zoning ordinances are in derogation of a property-owner's common-law right to unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed, and provisions therein permitting property uses should be liberally construed in favor of the property owner."

Brown v. Sandy Bd of Adj (1998)

29

Ordinances are Mandatory

Municipal zoning authorities are bound by the terms and standards of applicable zoning ordinances and are not at liberty to make land use decisions in derogation thereof.

Springville Citizens v. Springville, 1999 UT 25.

30

Standing to Challenge

The City's failure to pass the legality requirement does not automatically entitle plaintiffs to the relief they request. Rather, plaintiffs must establish that they were prejudiced by the City's noncompliance with its ordinances or, in other words, how, if at all, the City's decision would have been different and what relief, if any, they are entitled to as a result. *Springville Citizens v. Springville*

31

Standing to Challenge

An "Adversely Affected Party" means a person other than the land use applicant who:

- (a) Owns real property adjoining the property that is the subject of a land use application or land use decision; or
- (b) Will suffer a damage different in kind than, or an injury distinct from, that of the general community as a result of the land use decision. Utah Code Ann. 10-9a-103(2)

32

... where the encroachment is deliberate and constitutes a willful and intentional taking of another's land, equity may require its restoration, without regard for the relative inconveniences or hardships which may result from its removal.

Culbertson v. Salt Lake Co., 2001 UT 108

33

On the record before us, the uncontested facts support only one conclusion: That Hermes acted willfully and deliberately when it constructed its buildings after plaintiffs put both Hermes and the County on notice that the proposed construction would violate county ordinances.

Culbertson v. Salt Lake Co., 2001 UT 108

34

By allowing Hermes to proceed, the County stepped into the quagmire which we condemned in *Springville Citizens for a Better Community v. City of Springville*, where we emphasized that local zoning authorities "are bound by the same terms and standards of applicable zoning ordinances and are not at liberty to make land use decisions in derogation thereof."

Culbertson v. Salt Lake Co., 2001 UT 108

35

Conditions on Development

A development exaction may only be imposed on a land use application if:

- 1. An essential link exists between a legitimate governmental interest and each exaction, and
- 2. Each exaction is roughly proportionate, in both nature and extent, to the impact of the proposed development.

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Conditions on Development

In other words:

1. Do we have the authority to impose this requirement?
2. Does it address some burden imposed on the community by the development?
3. Is the burden imposed on the development roughly equivalent to the burden the development imposes on the community?

37

What's an Applicant to Do?

1. Provide a complete application and pay the applicable fee.
2. Demonstrate that the application complies with the ordinance legally and factually.
3. If denied, appeal the Land Use Authority's decision to the Appeal Authority, or
4. Ask the Appeal Authority for a variance.
5. If denied, appeal the Appeal Authority's decision to the District Court.

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Variances – Only Granted If:

1. Unnecessary Hardship
2. Circumstances Attached to the Property
3. Substantial Property Right
4. Consistent with Public Interest
5. Spirit Observed, Justice Done

39

Due Process of Law - Rights

1. Notice
2. To be heard and to present evidence
3. To respond to the evidence presented by others
4. Impartial decision maker

40

Due Process – Administrative Acts

1. The decision-maker is neutral and unbiased.
 - a. No undisclosed ex-parte communications.
 - b. No personal stake in the outcome.
2. Anyone with a protected interest in the proceeding:
 - a. Receives adequate notice;
 - b. Is heard and able to present evidence on the issues;
 - c. Can review and respond to evidence in a reasonable manner.
3. The decision must be based in fact and law. Findings of fact and conclusions of law are preserved in the record of the proceeding. Otherwise the decisions is arbitrary, capricious, and unreasonable.
4. The procedure must also comply with local ordinance and state statutes.

41

Zoning Ethics

1. Will this decision exclude some individuals unfairly?
2. Does the decision unreasonably interfere with the marketplace and produce financial windfalls to some?
3. Are we taking into account our duty to share regional burdens?
4. Are our aesthetic and design requirements excessive?
5. Are we imposing conditions and burdens on applicants that exceed our authority and/or the burdens their projects impose on the city?

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The Office of the Property Rights Ombudsman

- Information
- Mediation
- Advisory Opinions
- Arbitration

www.propertyrights.utah.gov

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Land Use Resources

Land Use Academy of Utah

www.luau.Utah.gov

- Training Videos
- Publications
- Links to Legislative Changes
- Focus on Citizen Planners

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Land Use Resources

Utah Land Use Library

www.utahlanduse.org/library/

- Advisory Opinion Database
- Topical review of land use regulation
- Detailed summaries of law on specific topics
- Streaming video of ULUI Fall Conference
- Utah Law of Eminent Domain (coming soon)

45

Land Use Resources

Land Use Politics Blog (Wilf Sommerkorn)

www.utahlanduse.org/blog/

Regular updates on pending legislation

Legislative recap of bills passed

Thoughtful summaries of political trends

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Land Use Resources

Property Rights Ombudsman

www.propertyrights.Utah.gov

- Full text of all advisory opinions
- Portal for information and dispute resolution
- Recent case law updates
- Information about eminent domain

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Utah Land Use Institute

PO Box 13295

Ogden, UT 84412

info@utahlanduse.org

www.utahlanduse.org

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