



AUTHOR: GREG Sant, Planning Administrator
DEPARTMENT: Planning & Zoning
DATE: November 5, 2024
TYPE OF ITEM: Administrative Action

SUMMARY:

The Commission will review a proposed Conditional Use Permit for 141 E. Mountain View Dr. The applicant is proposing to use his home as the base for a snow removal business.

BACKGROUND:

On October 14, 2024, Troy Benson brought in an application for a Conditional Use Permit for his home at 141 E. Mountain View Dr. He is requesting to run his snow removal business from his home and will have equipment that will be stored onsite. Attached is a site plan showing the locations at which he will store the equipment. He has also submitted pictures of his equipment for reference.

Per town Code 9-10-5(A), "The Town recognizes that many professional services (such as snow removal and bulk water hauling) are needed for the property functionality of a mountain resort town, and it is in the best interest of the Town and its residents to allow such services to operate from a residential zone in order to increase the likelihood that such services will be offered locally so long as they don't materially alter the character of the zone. Notwithstanding the Town's willingness to consider allowing these services and businesses to be operated as home occupations in residential zones, all home occupations shall be clearly accessory and subordinate to the principal use of the property for dwelling purposes. (amd. ord. 21-001, 1-12-21)

Per 9-10-5. C, the following standards shall be observed in the operation of all home occupations using garages, other accessory structures or yard space, which shall be approved by conditional use:

1. An occupation may be considered as a conditional use only under the following conditions:
 - a. The Planning Commission finds that the proposed home occupation will be clearly accessory and subordinate to the principal use of the property for dwelling purposes; and
 - b. The Planning Commission finds that the proposed home occupation will not adversely affect the residential nature and aesthetic quality of the neighborhood; and
 - c. Any off-street parking displaced by the home occupation is relocated elsewhere on the lot or parcel; and
 - d. The Planning Commission may impose any conditions it deems necessary to mitigate impacts of the home occupation on the neighborhood.
2. In determining whether to grant conditional use approval for the use of an attached or detached garage, accessory structure or yard space for a home occupation, the Planning Commission shall consider the effect of such use on the residential character of the

property upon which the home occupation is proposed to be located. In making a determination, the Planning Commission may consider factors including, but not limited to:

- a. Displacement of normal residential functions of yard space and building or structure usage.
- b. The potential for generation of noise, dust, vapors, fumes, odors and light.
- c. The potential for generation of excess traffic.
- d. The potential impact of the proposed home occupation on the aesthetic quality of the neighborhood and the property upon which the home occupation is proposed to be located.

ANALYSIS:

After reviewing the application, the staff has determined the following:

1. The proposed Conditional Use Permit (CUP) appears to be a subordinate use of the property to its primary use as a dwelling unit and does not displace normal residential functions of the yard or home.
2. The proposed CUP will not adversely affect the residential nature of the neighborhood as the equipment will be housed in the garage or screened from neighbors and the road. Furthermore, the equipment will be used away from the residence so the potential nuisance from dust, vapor, fumes, noise and odors will be minimal to none. In order to maintain these conditions, the Staff recommends that the idle time of the equipment be kept to a 5minute maximum. Furthermore, maintenance and repairs to equipment will be done inside the garage.
3. No off-street parking will be displaced as the business does not have clients coming to the home, rather the business is off premise, and the home is only for storing the equipment. This CUP will not generate excess traffic.
4. This use is listed as a Conditional Use in 9-10-5(E)

STAFF RECOMMENDATION:

The staff recommendation for this Conditional Use Permit is to approve it with the following requirements:

1. All required equipment must be housed in the garage or screened from the road and neighbors as to not impact the residential nature of the neighborhood.
2. Potential nuisance from dust, vapor, fumes, noise and odors will be maintained to a minimum with the maximum idle time allowed of 5 minutes.
3. Maintenance and repairs of equipment will be done inside the garage.

PROPOSED MOTION:

I move that the Conditional Use Permit be approved with the staff recommendations.

ATTACHMENTS:

A - Site Plan

B - Business Description and Photos of Equipment



Date 10-14-2024

Slope Side Services is a small snow management business. We are proposing to base our operations at the location of 141 E. Mountain View Drive, Brian Head, Utah 84719. This location is a residential zoning and the home of the owner, Troy Benson.

We would like to provide some key points you will be reviewing about our business and our proposed location. We obtained these key points of review from the Conditional Use Permit Process Documentation provided on your web site. We hope the information we provided provides a clear assessment for you.

Our proposed location is approximately a ½ acre property with a large log home and a large garage. The garage is the primary location where our snow removal equipment will be housed. We also have a secondary location to the rear of the residence as needed. Both locations are completely hidden from the view of the public, creating no impact on the homeowners around this location.

The equipment will be one small tractor and 2 attachments for removing snow.

The location of the equipment being stored will in no way impact the response of town services to the proposed location or the surrounding area.

Slope Side Services is an offsite business where we go out to service our customers. We will have no walk-up services for our customers. With no walk-up services, we will not impact the area with any traffic relating to Slope Side Services business.

Our business hours are from 5am to 5pm. These times can vary a little with storms and are manipulated by mother nature. The nature of our business is to provide access for people to their property thus preventing them from parking on the street when their property is snowed in, impacting the town in their clearing efforts. We do offer after-hours emergency services as needed so hours of operation may vary to accommodate the public in need.

Slope Side Services is dedicated to reducing our noise footprint on the community

- Our equipment is newer and very quiet when idling and operating, much like the sound of a car running.
- The primary location to store the equipment is the garage. The garage is heated, eliminating the need to idle equipment to warm the equipment up.
- The secondary location is the back of the house hidden from view, which has a power source to plug the equipment in to heat the engine. This also eliminates the need for idling equipment for warm up.

- We have an option to silence back up alarms for early morning and night operations and engage them when needed for safety concerns for our high traffic area customers.
- At our proposed business location, we have minimal neighbors that are spread out around approximately 200 feet away, we feel our noise impact will be virtually nonexistent.

Slope Side Services will not have any environmental impact on our base operation location or the area around.

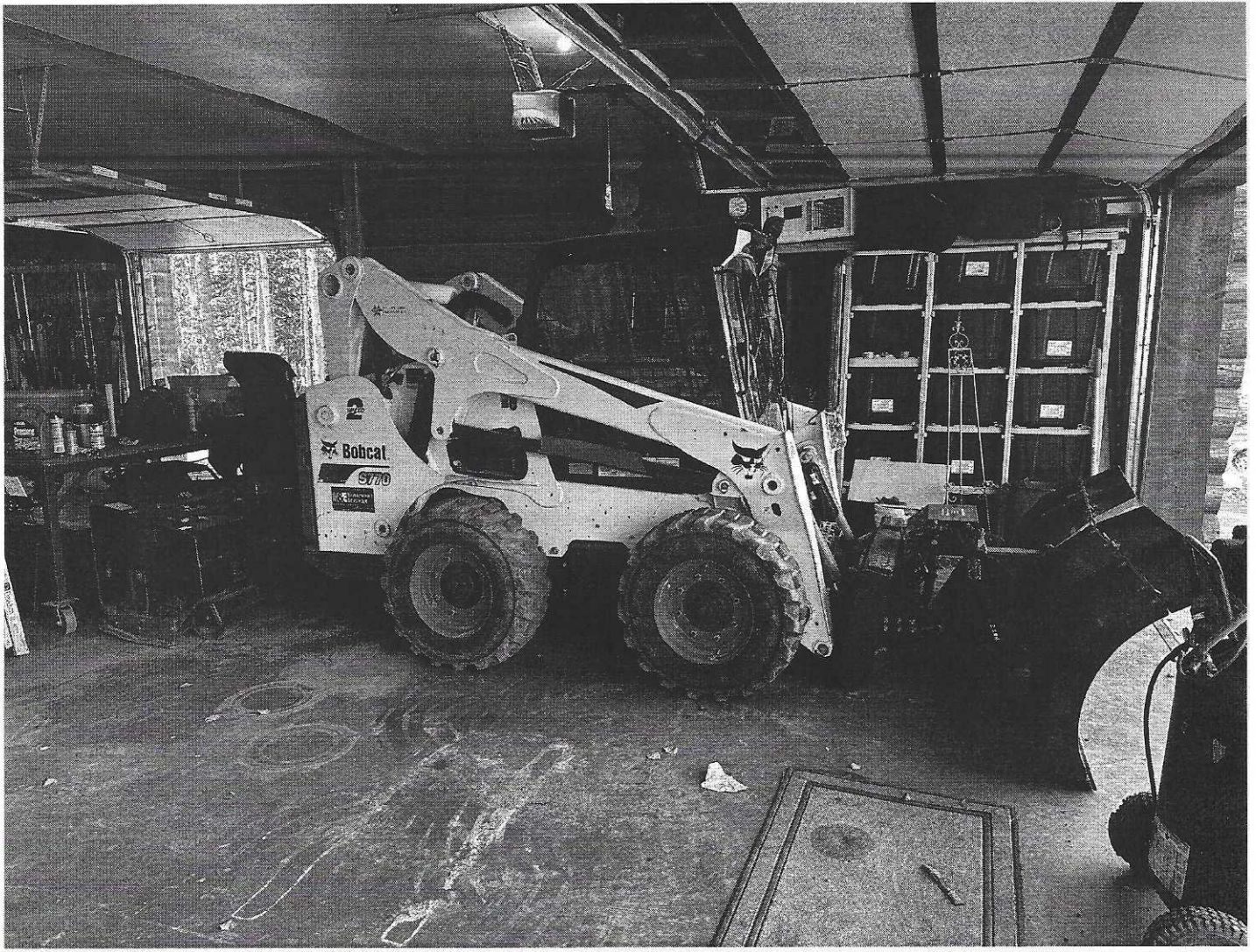
- The primary storage location for the equipment is inside the garage on a concrete surface. This area is where general service on equipment will be conducted out of view of the public. The concrete surface will provide an adequate barrier to prevent any ground contamination of soil, as any spills can easily be cleaned up.
- Major service will be conducted off site at a repair facility.
- Fueling will be performed hidden from view from a portable 100-gal fuel trailer stored under a tarp in the rear of my residence.
- Slope Side Servies uses newer equipment that is equipped with strict emissions for less pollution of our beautiful mountain location.

I would like to thank you for your time and consideration in this matter.

Sincerely,

Troy Benson







AUTHOR: GREG Sant, Planning Administrator
DEPARTMENT: Planning & Zoning
DATE: November 5, 2024
TYPE OF ITEM: Administrative Action

SUMMARY:

The Commission will review a proposed revision to the Conditional Use Permit issued to 339 Spruce Street in November of 2020. The applicant is proposing to add a shed onsite for the storage of fuel.

BACKGROUND:

The applicant has an active building permit for a garage and a home. This permit was issued on 7/12/2021. Before that, the applicant received approval for a Conditional Use Permit (CUP) on 11/17/2020. That CUP Staff Review is attached and referenced below. New plans were submitted to the building department in late 2021 that changed both the site plan and the design of the home. The revised site plan from that time is attached and was approved by the Planning Commission as part of a CUP amendment on December 7, 2021. Ultimately, construction on site has not proceeded precisely consistent with the site-plan approved for the CUP in December 2021.

The applicant has submitted a new application to revise his CUP that includes a fuel storage shed onsite as well as asking for permission to park one of the two large pieces of equipment on the east driveway, east of the house. Furthermore, the applicant would like to be able to fuel his equipment outside, next to the fuel shed. The submitted site plan reflecting what has taken place and what the applicant is asking for the Planning Commission to approve is attached. The new site plan now includes a fuel shed 10 feet from the home/garage and shows a driveway running along the west side of the property which was previously slated for undisturbed vegetative screening.

Conditions of the Original CUP dated 11/17/2020 were:

1. The applicant will construct a single-family residential structure with a large garage sufficient to store recreational vehicles. The structure will be strictly consistent with all requirements for a single-family residential structure, which will be its ongoing primary use.
2. The Conditional Use Permit is not effective until a Certificate of Occupancy is obtained.
3. Only 2 pieces of heavy equipment are allowed (parked inside a garage).
4. Screening will be applied for all equipment.
 - a. Screening: All outdoor storage of machinery and equipment shall be screened from the public view as seen from any public roadway. Existing trees and landscaping along with building orientation (according to site plan included in Exhibit A) are acceptable methods to minimize the adverse visual impacts.
 - b. Any change to orientation of the buildings from site plan in Exhibit A must be reviewed by Planning Commission to ensure sufficient screening remains.

5. Equipment cannot exceed an idle time of 5 minutes between 10pm and 7am, and no backup alarms will be used on premises.
6. Maintenance, fueling, and repairs to equipment will be done inside the garage.
7. Applicant will not damage snowmobile trail with equipment.
8. Equipment will yield to snowmobile traffic on Spruce.

On 12/7/2021 the Planning Commission reviewed this CUP again because of design changes to the building and site plans. The alteration to the site plan at that time took the main living area, which had been separate from the garage connected by a breezeway, and placed it on top of the garage, reducing the footprint of the structure. Part of the analysis at that time included the following:

“After obtaining a building permit and preparing the garage pad, the applicant realized that the cabin would eliminate too many trees to the south of the property. There is currently an open gap for the power line and eliminating the trees will leave the applicant with no privacy.”

The Findings of Fact at that time were as follows:

1. The single-family home meets the zoning and design guidelines for a single-family residential lot.
2. The property is in the buffer area between Single-family and Light Industrial zones.
3. The home still meets the Land Management Code for Single-family Residential zoning.
4. The home and the undisturbed trees will provide screening to the west and south, while also leaving trees to the east.
5. All conditions of the original Conditional Use Permit still apply.

On December 7, 2021 the Staff recommended and the Planning Commission approved the home to be built on top of the garage. The Staff commented that this is a normal building orientation for single-family homes and the undisturbed trees offer additional screening.

ANALYSIS:

Staff have reviewed all previous revisions to this CUP, and the current Findings of Fact as they relate to the original CUP are:

1. The home is consistent with all requirements for a single-family residential structure and that will be its ongoing primary use. – **Currently Conforming**
2. The CUP is not effective until a Certificate of Occupancy is obtained. – **Indeterminate.** **There has been a code enforcement complaint levied that the applicant has been operating his business from the property during construction, which has continued over the past couple of years. The applicant denies this claim and maintains that all equipment on the property is for the purpose of construction. It is difficult for staff to ascertain if the applicant is using equipment on site for construction or for water hauling and snow removal.**
3. Only 2 pieces of heavy equipment are allowed on site, and they must be parked inside the garage. **See discussion on condition #2. There have been more pieces of equipment on site, but it is reasonable to believe that such equipment has been used for ongoing construction. However, applicant is now asking to be able to park one of these pieces of equipment on the east driveway, behind the fuel shed and behind the house. After**

visiting the site, it is staff's opinion that it would be screened from both the neighbors and the public road.

4. Screening will be applied for all equipment. – Currently this is an issue. Since the last review by the Planning Commission on 12/7/2021 most of the trees have been removed from the west side of the property. The property corners have now been marked and it is apparent that all of the trees on the west side of the property have been removed. One reason for this is that the driveway that now encircles the home is not on the original site plan. The new portion on the west is within the defensible area surrounding the home (30' per WUI, first 15' cleared except for shorter bushes/shrubs, next 15' thinned). Furthermore, the new site plan shows this as the snow storage area. Applicant has committed to planting large 6 foot tall trees along the west property line at the front property line and at the gap behind the house. The applicant has also suggested using fake trees to enhance the screening.
5. Equipment cannot exceed an idle time of 5 minutes. – Currently the Town has not had any complaints about idle time.
6. Maintenance, fueling, and repairs to equipment will be done inside the garage. – Storing fuel in a garage that is under a home does not meet the building code. Because of this, the applicant built a shed for the storage of the fuel. This shed is shown on the new site plan and is another reason for the amendment to this CUP. The shed did not require a building permit since it is smaller than 200 square feet. The applicant is now asking to change the CUP to allow that the fueling happen outside, next to the fuel shed.
7. Currently conforming
8. Currently conforming

We have discussed these matters with the applicant and have requested the following to determine compliance with the conditions of the CUP:

1. A new site plan that better reflects existing conditions has been submitted along with an application to revise the CUP. That application and site plan are attached.
2. The current requested site plan shows the restoration and revegetation of the lot, however the applicant must come up with a screening method to screen his neighbors and the road from the miscellaneous small equipment that will be stored on the lot.

STAFF RECOMMENDATION:

Given that the applicant proceeded with development inconsistent with the CUP, it may be appropriate to revoke the CUP all together. The Town is only required to allow a conditional use to proceed if the applicant is willing to abide by reasonable conditions mitigating foreseeable detrimental impacts of the use. By developing inconsistent with the CUP approved site plan, the applicant has displayed an unwillingness to abide by the conditions. According to §9-11-2(D) of the LMC, "the violation of any condition, safeguard, or commitment of record by the applicant shall be sufficient grounds for revocation of conditional use approval." In this case, the removal of trees which were slated on the approved site plan to be screening for the conditional use without modifying the site plan and receiving approval from the commission ahead of time would be a clear violation of the CUP and grounds for revocation.

In addition to violation/revocation provisions, the LMC gives a time limit to begin use of the CUP: "The approval for the use shall expire unless the conditional use begins within a period of

twelve (12) months from the date of conditional use approval or a building permit for the use has been issued.” Since this CUP has not officially begun to be used, it is technically expired.

Alternatively, the Commission may consider granting a revised CUP (or new CUP if the existing one is considered expired) if the Commission determines that the reasonably anticipated detrimental impacts can still be effectively mitigated via new conditions. If this is the case, Staff recommends the following conditions:

1. Condition #4 above to be modified to:

Screening: All outdoor storage of machinery and equipment shall be screened from the public view as seen from any public roadway. Existing trees and landscaping along with building orientation (according to site plan included in Exhibit A) are acceptable methods to minimize the adverse visual impacts. Property corners need to be placed by a licensed surveyor to determine how much vegetative screening remains in place on the property. Where insufficient vegetative screening remains on the subject property, a plan for restoration and revegetation along with any required screening that is approved by the Planning Commission, will be installed prior to Certificate of Occupancy, no later than July 1, 2025.

2. Condition #6 be modified to: Maintenance, fueling, and repairs to equipment will be done inside the garage. Fuel will be stored in a shed onsite separate from the dwelling unit that needs to be at least 10 feet from the home.

PROPOSED MOTION:

Staff recommends tabling the item until specific condition language can be drafted conforming to the Planning Commission’s determinations on appropriate screening.

ATTACHMENTS:

- A - Approved 2020 Conditional Use Permit w/site plan
- B - Revised site plan from 2022
- C - Current application and new site plan

October 14, 2024

Dear Property Owner:

An application has been received by Brian Head Town requesting a Revision to a Conditional Use Permit at 339 Spruce St. Brian Head Town is sending out this notice as per Utah Code Title 10, Chapter 9a, Part 2 and Brian Head Land Management Code 9-1-8.

- A. Anyone wishing to review the information on the proposed plat amendment may do so at Brian Head Town Hall during normal business hours of 9:00 a.m. to 5:00 p.m. Monday through Friday.
- B. Anyone wishing to make comments about the proposed plat amendment may submit written comments to the Brian Head Town Clerk @ nleigh@bhtown.utah.gov no later than November 4, 2024, by 5:00 p.m.
- C. The Brian Head Planning Commission will hold a Public Meeting at the BRIAN HEAD TOWN HALL COUNCIL CHAMBERS, 56 North Hwy 143, Brian Head, UT on November 4, 2024, at 1:00 p.m.

If you have any questions or need additional information, please do not hesitate to contact our offices during normal business hours.

Respectfully,

Brian Head Town

Bret Howser
Town Manager

 BRIAN HEAD

Enclosure

October 22, 2024

Brian Head Town Council
Planning Commission and Staff
PO Box 190068
56 North Hwy 143
Brian Head, UT 84719

RE: CUP Application at 339 W. Spruce Street
(Revision to a Conditional Use Permit)

Dear Brian Head Town,

On October 21, 2024, I received a letter from Bret Howser, Town Manger Brian Head Town. The letter appears to be a notice for a revision to the referenced CUP scheduled to be heard by the Planning Commission on November 4th, 2024, at 1 pm MST at the Brian Head Town Hall. There was very little information contained in this letter stating that "Anyone wishing to review this information on the proposed plat amendment may do so at Brian Head Town Hall during normal business hours..."

As you are fully aware there is a long and controversial history with this application as well as prior proposed zone changes for 321 Spruce Street and a General Plan Amendment for these two parcels attempting to rezone from Single Family Residential to Light Industrial. In recent years the neighbors have been required to join together and vigorously fight to protect our homes on Spruce Street and its long-established residential use and historical nature. We have spent hundreds of hours collectively researching, writing and attending meetings and public hearings and it has come at a cost to most of us. It's been emotionally bankrupting to have gone through this and will forever change the feeling towards our homes and enjoyment we once had. It's something no one should ever have to endure for a recreation property yet here we are again.

During the months that led up to the approval of the CUP on November 17, 2020, there were numerous objections rendered sighting reasons why this should not be allowed but in the end compromises were made and conditions ratified to ensure that these compromises would be met above all else. We were assured this would be followed and we could attempt to put this behind us and try to resume some sense of normalcy and get past public hearings we were once ambivalent to. Again lets recall this was being tested on us. The issues being fleshed out were the interpretation of the Land Use Code for Home Occupations as a Secondary use for a Primary Residence. (see attached final conditions at the end of this letter).

This wasn't to be the case and the deviations from the agreed to conditions began to unravel starting with the clearing of the tree buffers that were so heavily scrutinized and we were assured would be protected (see below correspondence from Mrs. Cape to Amanda Hunter on June 21-22, 2021).

From: Danielle Cape [REDACTED]
Date: July 22, 2021 at 2:43:33 PM PDT
To: Wendy Dowland <wdowland@bhtown.utah.gov>
Cc: Amanda Hunter <ahunter@bhtown.utah.gov>
Subject: Re: Lot line setbacks
Thank you ladies.

Sent from my iPhone

On Jul 22, 2021, at 11:30 AM, Wendy Dowland <w Dowland@bhtown.utah.gov> wrote:

Hi Danielle,

Amanda Hunter (the Town's new Code Enforcement employee) and myself went and inspected the property this morning. We measured and found that the clearing for the cabin has left trees along the property line at depths between 8 ft and 12 ft. This is within the guidelines for our Wildland Urban Interface Code and building setbacks. We have also notified the owner and noted that no more trees are to be removed from the west property line. We will continue to monitor the property throughout the process. Please let us know if you have any other questions or see anything else that concerns you.

Thanks,
Wendy

On Thu, Jul 22, 2021 at 10:25 AM Danielle Cape [REDACTED] wrote:
Thank you very much. I look forward to what you find out.

Danielle
Sent from my iPhone

On Jul 21, 2021, at 4:42 PM, Bret Howser <bhowser@bhtown.utah.gov> wrote:

Wendy, could you look into this tomorrow morning, please. I know his certification of footings will have to show that he's meeting setbacks, but I believe his CUP was contingent on preserving a buffer of trees between him and the neighbor.

On Wed, Jul 21, 2021, 4:35 PM Danielle Cape [REDACTED] wrote:
Hi Bret,

This is Mrs. Cape who has the property at [REDACTED]. I see that Mr. Carr is busy next door knocking down trees. It appears as though the lot line setback has been ignored from what is visually accessible. Could you please look into this ASAP.

Thanks,
Danielle Cape

Sent from my iPhone

--
Wendy Dowland
Brian Head Town
435-677-2029



On August 17, 2021 the CUP was further amended without including or making aware of this to any of the neighbors that were intimately involved in the final compromises contained in the November 17, 2020 approval. This request was a modification from the existing approved site plan to relocate the garage door from facing the East side of the garage to facing the Spruce Street. While this was ultimately benign it was alarming that given the emotional history of this application that the neighbors were not provided any notification other than what I presume was the public notice requirements of posting it in select places around town and publishing on line. As an Adjoining Property Owner we were not notified for this request to amend the CUP as referenced below.

9-1-8: NOTICES:

Whenever notice to adjoining property owners or the public is required by any section of this title, the notice shall be given in the following manner:

A. *Public Notice: Public notice of all public hearings and public meetings required to be noticed shall be given in accordance with Utah Code Annotated §.10-9a-201.*

B. Notice to Adjoining Property Owners:

1. *Where the provisions of Utah Code Annotated § 10-9a-201 et seq.*

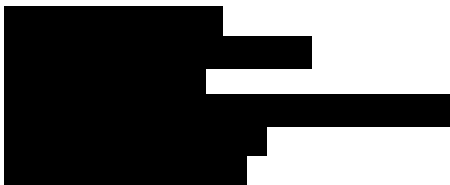
2. *The applicant will provide a referral packet as defined in Chapter 4 of this title. The Planning and Zoning Department will prepare and mail the notice to adjacent landowners, as well as appropriate agencies. The mailing will be paid for by the applicant. The notice shall be mailed at least fourteen (14) days prior to the public hearing. (ord. 15-004, 4-28-2015, amd. 21-005, 05-11-2021)*

In May of 2023 an email was submitted requesting the Town act regarding violations with the conditions (See below email correspondence from May 14-16, 2023)

Thank you. I don't want to be a pesky neighbor and we've all be getting along fine, just want to make sure it doesn't get off to the wrong start.

Don Cape

Vice President



On May 16, 2023, at 12:57 PM, Bret Howser <bhowser@bhtown.utah.gov> wrote:

Amanda, would you please log the attached code enforcement complaint and begin investigation/action. Thx

On Sun, May 14, 2023, 9:05 PM Don Cape [REDACTED] wrote:

Brett, I hope you are doing well. I wanted to make note of the activities that have been going on with the heavy equipment @339 spruce street that are not in compliance with the CUP for snow removal as part of the home occupation provision. As you know the CUP is limited to snow removal only. This is limited to 2 pieces of equipment that need to be stored inside. This is only permitted once the residence has been completed and finalized and permits closed out.

We have watched their commercial services operate out of this property all winter despite having the project completed. In addition to these operations they have also conducted refueling this entire season from a tank that's installed on the property.

We all compromised on the final conditions and we would appreciate the city enforcing these requirements. Since the spring has started a loader and excavator have been coming and going and parked on the street that are clearly not being used for the construction of the residence.

Can you please engage with the applicant and correct these actions that are not permitted. Should you request additional verification I have video footage of the non compliant Actions.

Thank you.
Don Cape
Vice President



In December of 2023 again email correspondence with the Town requesting action be take to respond to deficiencies and our frustrations over miss use and conditions not being adhered to.

Amanda, thank you for your reply and Happy Holidays.

Don Cape
Vice President



From: Amanda Hunter <ahunter@bhtown.utah.gov>
Sent: Monday, December 11, 2023 8:23 AM
To: Bret Howser <bhowser@bhtown.utah.gov>
Cc: Don Cape <dcape@diversifiedgrp.com> Lester Ross <lesterross@bhtown.utah.gov>
Subject: Re: 339 Spruce CUP

Don

I have contacted the owner and reminded him of the CUP guidelines for that property. Thank you for contacting me.

On Thu, Dec 7, 2023 at 10:47 AM Bret Howser <bhowser@bhtown.utah.gov> wrote:

Don, I'm passing your email to Amanda Hunter, our Code Enforcement Officer. She will review the terms of the CUP and look into this and report back. Thanks.

----- Forwarded message -----

From: Don Cape <dcape@diversifiedgrp.com>
Date: Thu, Dec 7, 2023 at 9:38 AM
Subject: Re: 339 Spruce CUP
To: Bret Howser <bhowser@bhtown.utah.gov>

Brett, it's been some time since we've visited this project and want to make sure the agreements are being kept and enforced. The neighbors have been understanding of the construction process despite the obvious use of the property for a construction staging operations for the last 2 years. We all have daily footage from our cameras that

show the shuttling of excavators and loaders in the morning and dropping them off in the evening all summer long for 2 years, and parking in the street and on the private property across Spruce.

We have committed to be good Neighbors but let's make sure the Conditional Use Permit is being adhered to. The loader is clearly being stored outside and has been for some time. Compromises happened upon the ratification of the CUP and are not to be furthered by a pattern and practice violation.

We greatly appreciate your attention to this matter

Happy Holidays

Don Cape



Over the July 4th weekend of this year (2024) I bumped in to Mayor Calloway at the pancake breakfast. We were just visiting, and he asked how things were going with the CUP project that he had been vested in guiding a solution and ultimate compromise with the neighbors. I shared the history of issues and frustrations by the noncompliance, and he asked me to submit a summary of my conversation so he may look into the issues. (email correspondence below).

Clayton, it was wonderful to see the town so vibrant this year and great to catch up with you over the 4th of July. Per our conversation, please find the enclosed history on the CUP as well a subsequent correspondence regarding the same. I have also provided a link below to the photos and exhibits.

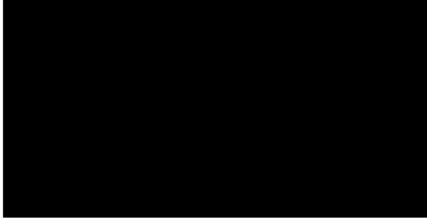
 [339 Spruce CUP](#)

This was conditioned to only have "Snow Removal" not Water Hauling and certainly not construction. No outside fueling sheds, was supposed to have preserved the trees along the PL but there are no trees left on his property and the ones adjacent have been damaged or will die due to the continued abuse and now retaining wall. I like Mike and want to continue to be a good neighbor but the scale is out of balance for what was a long and arduous compromise.

Its time something is done to bring this back into compliance or rescind the CUP. That was the agreement. I don't know what can be done about the trees but that was always the fear and now they are gone, he's cleared them out so he can drive equipment back behind the building. This was to remain a tree buffer. This is supposed to be a home with snow removal occupation only. Trucks and equipment are always parked on the street and all over the property. I'm happy to arrange to meet on site to review should you desire.

Thank you,

Don Cape

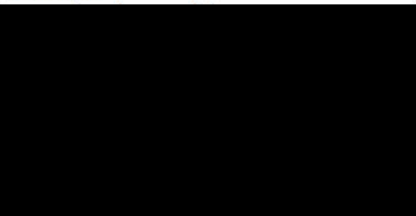


In October I followed up a few times to see if anything had been reviewed or looked into by the Town and included below is that correspondence.

Brett, I would like to schedule a meeting to discuss this as it isn't consistent with compromises and the conditions that were ratified and agreed to. He can't just keep updating the CUP to match what he did or does. As I'm sure you recall this was extremely difficult and emotional for us and all the neighbors. The concerns about what could or may happen are now very real. We need to make sure the agreements are adhered to. I've not informed the neighbors yet about the latest correspondence so hoping to get out in front of this. He's basically violated the majority of conditions at this point without care the biggest one is not operating the snow removal until he's received a C/O. He's not allowed to base his construction and shuttle equipment and trucks all year. Only snow removal. We've been extremely patient and wanting to be good neighbors but it hasn't been reciprocated

I appreciate your time and look forward to hearing from you

Don Cape



Begin forwarded message:

From: Bristlecone Building Co <[redacted]>
Date: October 1, 2024 at 6:03:24 AM PDT
To: Don Cape <[redacted]>
Subject: Fwd: Carr CUP

You don't often get email from [redacted] [Learn why this is important](#)

This is the last conversation.
Sent from my iPhone

Begin forwarded message:

From: Greg Sant <gsant@bhtown.utah.gov>
Date: September 25, 2024 at 12:02:50 PM MDT
To: Amanda Hunter <ahunter@bhtown.utah.gov>
Cc: Bret Howser <bhowser@bhtown.utah.gov>, Bristlecone Building Co <[redacted]>
Subject: Re: Carr CUP

As a follow up to Amanda's response I will let you know what I discussed with Mike Carr. I met with him on 9/24/2024 in my office and we looked at his building permit application and the submitted plans. The site plan was not updated to reflect what he is doing on his property. The architectural and structural plans were updated and what he is building matches what we have in our records. I told him that we have a problem with the following: the removal of more trees than was anticipated, the fuel shed that is on the side of his home was supposed to be in the garage, and the driveway was only supposed to be on one side of the house. He has committed to get me a new site plan showing the building sited as it has been built, with the fuel shed off to the side (at least 10' from the home) and the driveway location as proposed. He also has committed to show the location of the new trees that he will plant, and he has committed to doing the planting now.

When this plan is complete we will take it back in front of the Planning Commission to get it approved as well as to revise the Conditional Use Permit. It should be noted that having the fueling happening in the garage as originally stated in the CUP does not meet building code. I am hoping to get this new site plan from Mike's engineer soon and try and get it on the soonest Planning Commission that I can. If you have any other questions please contact me.

On Wed, Sep 25, 2024 at 8:53 AM Amanda Hunter <ahunter@bhtown.utah.gov> wrote:

Bret

His CUP is not in effect until he has COF and he does not have that yet so we can not enforce it as of now. I have talked to Mike and he did come in and talk with Greg about his building permit and his CUP that he would like to make some changes to and it will be going in front of the Planning Commission.

On Tue, Sep 24, 2024 at 5:04 PM Bret Howser <bhowser@bhtown.utah.gov> wrote:

Amanda, Greg and I went and looked at this a few weeks ago. I can't remember what all we saw, but I think I called Mike Carr and asked to address a couple things. Maybe Greg can remember what happened. But I'll look to you to investigate whether Mike is holding to his conditional use permit and enforce accordingly. I'd like to see it all documented -- meaning there's a letter that lists each condition of the CUP and states whether or not he is in compliance and if not, explain how not and include pictures. Then we can send a copy of the letter to Mike and copy Don and the Town Council on it as well. We need to be thorough on this.

Thanks.

On Tue, Sep 24, 2024 at 6:52 AM Bristlecone Building Co [REDACTED] wrote:
Clayton,

What's the status of this. I never heard back and yet it's still way off base on what was agreed to. We've been more than patient.

He's basically created a full round commercial driveway eliminating all the trees and the ones that are damaged will also die. None of what he's done here is what was agreed to. This was to be a home occupation for snow removal only not running summer time construction company and equipment. Also the fuel shed was moved but is not allowed per the concessions agreed to. This is exactly what we all feared would be the result. Mike does whatever he wants and everyone in town knows that's the deal.

Danielle's so mad she doesn't even want to come back up here. I looked this morning and I have over 600 emails to various parties and community members over this and the lot next to it. That should not have happened we bought here to have a retirement and the pattern and practice from the town and this applicant that ensued left me no choice but to spend countless hours trying to protect our neighborhood. This is just not how it should go.

We would strongly desire to see a plan for this to be brought into full compliance or suspend the "conditional permit"



Don Cape
Executive Vice President

[REDACTED]

On Jul 23, 2024, at 8:01 PM, "Don Cape" </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8014FB4CD1894A3F937C31E29F460637-DON> wrote:
Thank you Sir. Appreciate you.

Don Cape
Executive Vice President

[REDACTED]

On Jul 23, 2024, at 4:35 PM, Clayton Calloway <ccalloway@bhtown.utah.gov> wrote:
Good afternoon, I wanted to let you know that I received your message and I will be looking into how the project complies.

Thanks, Clayton
Sent from my iPhone

On Jul 23, 2024, at 3:55 PM, Don Cape [REDACTED] wrote:

Clayton, it was wonderful to see the town so vibrant this year and great to catch up with you over the 4th of July. Per our conversation, please find the enclosed history on the CUP as well a subsequent correspondence regarding the same. I have also provided a link below to the photos and exhibits.

[<image001.png>](#)
[339 Spruce CUP](#)

This was conditioned to only have "Snow Removal" not Water Hauling and certainly not construction. No outside fueling sheds, was supposed to have preserved the trees along the PL but there are no trees left on his property and the ones adjacent have been damaged or will die due to the continued abuse and now retaining wall. I like Mike and want to continue to be a good neighbor but the scale is out of balance for what was a long and arduous compromise.

Its time something is done to bring this back into compliance or rescind the CUP. That was the agreement. I don't know what can be done about the trees but that was always the fear and now they are gone, he's cleared them out so he can drive equipment back behind the building. This was to remain a tree buffer. This is supposed to be a home with snow removal occupation only. Trucks and equipment are always parked on the street and all over the property. I'm happy to arrange to meet on site to review should you desire.

Thank you,

Don Cape
Executive Vice President
Tharaldson Hospitality/Investments
[REDACTED]

[REDACTED]
Sent from my iPhone

--

Amanda Hunter
Brian Head Town
435-677-2029



BRIAN HEAD

--

Greg Sant
Planning and Building Administrator
Brian Head Town
Office: 435-677-2029
gsant@bhutown.utah.gov

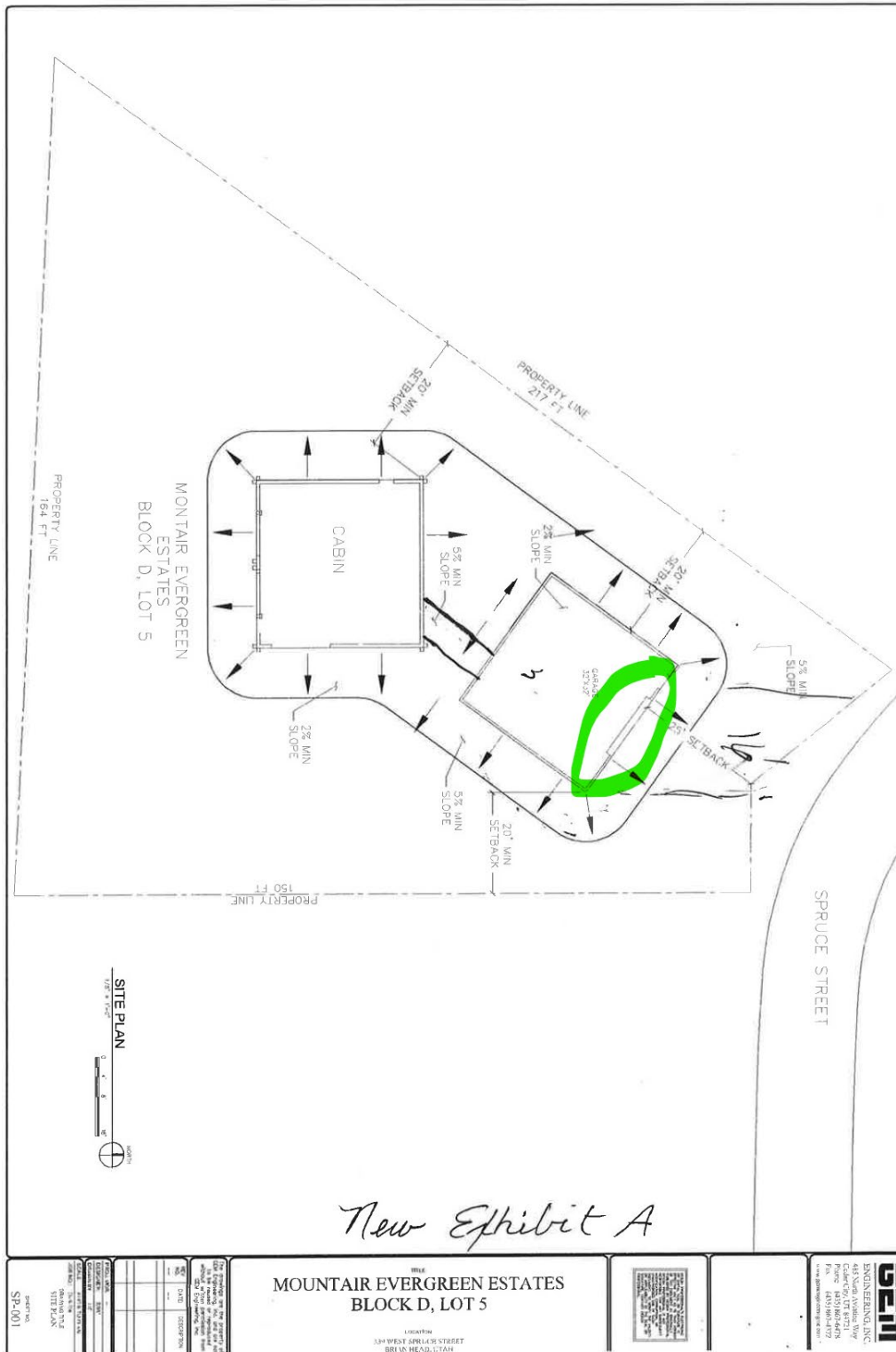
As you can see from the constant engagement and notices to the town exactly what we all were concerned that would end up happening is what's resulted. Yesterday I received a phone call from Mike Carr asking if we had any concerns about what has been happening and that he was just about completed with the project. The conversation was poignant and neighborly but I shared with Mike all of the issues that have been well documented and submitted through out the last 4 years.

Yesterday I received the notice in the mail for yet another request to modify the CUP. There were 3 pages included in the brief notice.

1. "Original Site Plan 10/3/2020"
2. "New Site Plan 10/14/2024"
3. "339 W Spruce Street"

I'm not sure what these are but for starters No 1. "Original Site Plan" is not the Approved Site Plan from November 17, 2020 or as Amended August 17, 2021. Those both showed a 32x32 single story garage close to Spruce and a separate 34x34 single story cabin offset to the rear of the garage with a single Driveway that was on the East side of the garage only which said driveway was part of the compromise reached as to preserve the tree buffer along the west property line. The first being what was agreed to with the neighbors and approved on November 17th as Exhibit A of the record approval. And the second only the change to move the Garage door to face Spruce Street. The "Original Site Plan" included in this most recent notice has never been seen and depicts a larger rectangular cabin in place of the 34x34 cabin and shows a new and additional "Driveway" on the West side. These are shown below

August 21, 2021 Amended CUP (Showing Garage Door being relocated to Spruce)



This is extremely troubling how this was even included in the recent packet because its not the Approved Plan of a single story cabin and single story garage both with hip roofs and a Driveway only on the East side. Then it brings us to what actually got built today. A 2-story shop with living quarters above and a full 360 driveway around the shop, the Driveway on the west side of the Shop that wasn't to be there in order to preserve the tree buffer to the property line, and a rock retaining wall along the West property line to back fill for this new Driveway.



TREE BUFFER????



So now what, here we are, there is a 2 story shop with living quarters above that doesn't comply to the approved CUP Conditions and Exhibit. The trees have been removed which were one of the largest components of the entire situation. We warned, and pleaded that this was the pattern and practice of the applicant on prior applications for a Home Occupation as a secondary use for a Primary Residence. The use was conditioned on a Certificate of Occupancy meaning the project had been fully completed and complied with conditions yet the use has been enjoyed by the applicant over the last 4 years in addition to using this property to store and shuttle construction equipment on and off site for unrelated work. Parking trucks, and heavy equipment unrelated to the actual work being carried out for months and months, installing diesel fueling tank in a shed next to the property which was discussed in depth and ultimately conditioned to read "Maintenance, fueling, and repairs to equipment will be done inside the garage."

On the following pages are the original approval with conditions from November 17, 2020 meeting and the Amendment from August 21, 2021. My original letter sighting the concerns with the original application allowing for this CUP.

I can't see how anyone could read this and conclude this was a complete failure of the process, laws and statutes. We relied and entrusted the Town to make sure that none of this would happen, we engaged civilly and promptly numerous times over the last 4 years to assist in this process with professional courtesy. This has left us emotionally scarred and will never be able to patronize our properties in the fashion for which they were meant without the constant reminder of this failed process. I have no idea what is in store for the November 4th meeting but again will travel 200 miles spending \$200 dollars for gas out of my own pocket to beg and plead with the Town to protect us and do the right thing once again.

In all of this what is the most troubling to me is the correspondence from Greg Sant, who I empathize wasn't employed when this was approved. In summary his response... *the Applicant didn't comply to any of the conditions he was supposed to and were clear documented violations but he is going to bring in a plan that matches what he wanted to do and ultimately did and we will get it to the Planning Commission for approval....* Huh??? There is no supporting argument this property deserves to have a CUP issued. The blatant disregard for the rule of law is self evident and it should be rescinded and terminated immediately. Brian Head Town, do the right thing.

Sincerely and Respectfully,

Don Cape



November 2, 2020

Brian Head Town Council
Planning Commission and Staff
PO Box 190068
56 North Hwy 143
Brian Head, UT 84719

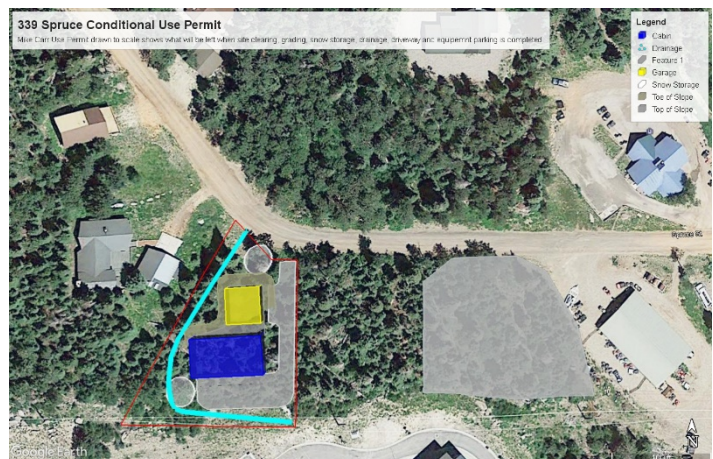
RE: CUP Application at 339 W. Spruce Street
(Amended from 10/20/2020 Planning Commission Meeting)

Dear Brian Head Town,

Please accept this letter of record as my revised and amended opposition to the Conditional Use Permit for the property located at 339 W. Spruce Street. The application states that the Applicant, "M & R Services is requesting a conditional use permit for the purpose of providing snow removal and water transport services in Brian Head." As referenced in the subsequent sections, this application for a Conditional Use Permit does not meet the standards as required under 9-10-5C: Home Occupations. 10 letters of opposition have been submitted from Neighbors, we urge staff to reconsider their recommendation for approval. The applicant has established precedent of not complying with conditions of approval as stated in the Background and evidenced by the failed Conditional Use Permit of 262 E. Quakie Drive.

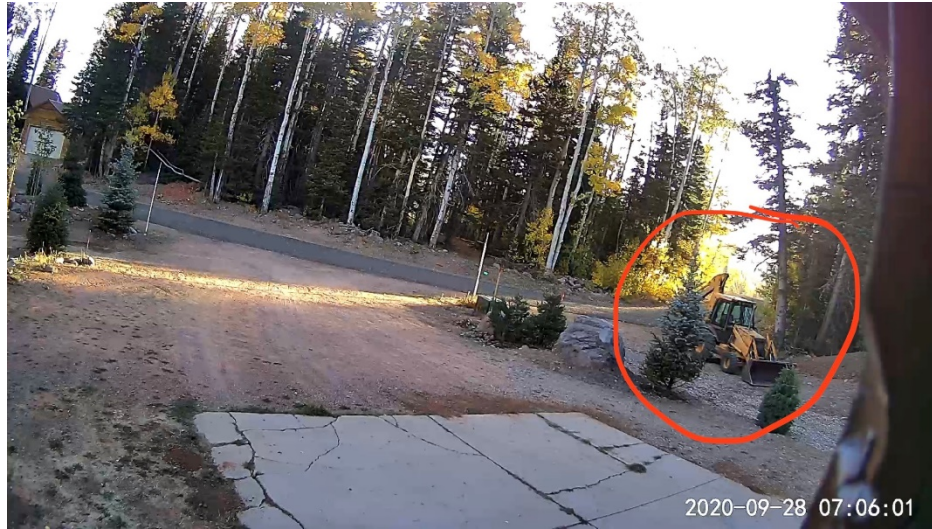
"The applicant previously applied for and was granted a Conditional Use Permit for the property located at 262 E. Quakie Drive in 2016. One of the conditions of the permit was that the approval would expire if a building permit was not acquired within two years. The applicant was unable to build during the required time frame and has since purchased property on Spruce Street. The applicant feels that this property provides a better location for the service he provides. The applicant is asking for the same conditions that were previously applied."

262 Quakie is 15% larger and is basically level with sparse trees and streets bordering two sides which is more conducive to the intended use and ingress/egress from water hauling and heavy equipment.



Additionally, the cabins in this location don't have municipal water so these are his clients for Water

Transport. All the cabins in the Spruce, Aspen and Fir area are on City water. The location is clearly a unilateral desire by the Applicant and should not be considered as a basis under the review. Shortly after purchasing the subject lot on August 27th the applicant proceeded with dumping fill and storing equipment on the subject lot without obtaining any requisite permits or notifying the Town as required under the code. Which this event resulted in a citation from the Town Manager. Continuing to reward this applicant's pattern of non-compliance should certainly be questioned as it relates to this or any future Conditional Use Permit application, especially given the sensitive nature and history of these neighborhood lots. Had the applicant approached the city for feedback this it would have been made clear that these lots have history and may not be the best place for him to pursue his interests.



Brian Head Town
CODE ENFORCEMENT VIOLATION No. 016

Part 1 - White - Management
Part 2 - Yellow - Charge
Part 3 - Pink - Marshal

Warning Citation Date: 9-25-2020

TO: Aspen Cove Place or U.S.A.
Address: Zip Code: Occ. Phone:
Address of violation: 2000 Spruce Ave, Brian Head, CO 81420 Zip Code: 81420 Home Phone:

CODE SECTION **COMPLY WITH REQUIREMENTS AS NOTED**

9-7-10(1) Excavator, backhoe, loader, skid steer, or other equipment on residential lot.
Equipment must be stored or properly removed.
Failure to do so by 9-30-2020 will result in a citation being issued.

For Additional Information Phone: 435-677-2029

By: [Signature] Title: Town Manager

Chapter 2. Definitions

HOME OCCUPATION: Any income producing activity conducted primarily within a dwelling and carried on by persons residing in the dwelling unit; **which use is clearly incidental and secondary to the use of the home for dwelling purposes.** (Ord. 15-004, 4-28-2015)

Subject Property 339 Spruce –

The Subject Property is zoned R-1, and the adjacent lots 321, 301, and 281 Spruce street were the focus of a proposed Rezone of lots along Spruce in January of 2016. This was an extremely sensitive subject and became a point of contention for the neighborhood. In cooperation from the Town and strong input from the neighbors on January 12, 2016 the Town adopted Ordinance No. 16-001, an ordinance amending the Brian Head Zone District Map, Chapter 6 in the Land Management Code. This resulted in a compromise with the neighbors and only lots 301 and 281 being zoned to Light Industrial therefore leaving the buffer at the crest of the hill to R-1 Residential. Even though Lot 301 is 0.46 acres did not qualify as a Minimum Lot Size under 9-7-6: L-1 LIGHT INDUSTRIAL: for the following reason:

D. Physical Restrictions: The restrictions below shall be considered minimum, and more restrictive standards may be prescribed as conditions of a conditional use permit for any use:

- *Minimum lot area: Twenty-one thousand seven hundred eighty (21,780) square feet (1/2 acre).*

This record alone should tip the scale of meeting the duty of care, as evidenced in various sections of the code, for considering this application.

October 20, 2020 Planning Commission Meeting –

The Referral Packet was received on October 8, 2020 citing the date of a PC hearing for October 20, 2020 yet the Town Calendar did not show a meeting was planned until October 19 the night before the hearing. Additionally, there was not a physical posting at the General Store, a location typically used in Brian Head until October 19th as confirmed by Staff. This is especially problematic due to the second home nature and absentee owners. On the morning of October 20th a meeting was conducted with Staff to discuss why this application met the qualifications under 9-10-5 as evidenced by the published Brian Head Land Management Code which stated

Home occupations identified in subsection 9-10-5C of this title prohibit the use of Snow Removal and Water Transport Services.

- E. Conditional Uses: Home occupations which **shall not be considered** under subsection C of this section include the following uses, or uses which are similar in character, origin or impact, as determined by the Building Official/Zoning Administrator: (2010 Code, amd. Ord. 15-018, 12-8-2015)*
- *Agricultural uses that involve the keeping of animals, unless in a zoning district where the keeping of such animals is allowed.*
 - *Agricultural uses that use more than twenty five percent (25%) of the area of the lot when the lot is less than one acre in size.*
 - *Kennel, animal hospital.*
 - *Machine shop.*
 - *Light Manufacturing.*
 - *Secondhand shops and pawnshops.*
 - *Storage and warehousing.*
 - *Uses which involve the storage, display or repair of motor vehicles, or body and fender work on such vehicles. (Ord. 08-016, 8-12-2008)*
 - **Snow Removal Services (Ord. 15-018, 12-8-2015)**
 - **Water Transport Services (Ord. 15-018, 12-8-2015)**
 - *(amd. Ord. 17-004, 7-11-2017).*

At this meeting Staff indicated that the published documents contained a typo and in fact *Ord. 15-018, 12-8-2015* Amended this to say, “shall be considered”. At this point the neighbors that received the Referral Packet believed this wasn’t allowed based on the published Code. This left little or no time to review the code and provide appropriate comments from the neighbors, certainly not the time as would have been allowed from the receipt of the Referral Packet, and only if you were notified within the 300’ radius. Essentially not publishing an actual Planning Commission meeting on the calendar with an agenda item for review by the public, no one had knowledge of a hearing including the fact that even if they did they thought it wasn’t allowed under the published code unless they were present at the December 8, 2015 hearing when the change in ordinance was adopted by Town Council.

As this was my first public meeting in Brian Head, I was anticipating a different process. Typically, staff does a complete presentation of the agenda Item going into relevant details displaying the plans and project documents etc., discussing the application and conformity to code then concluding their presentation with a recommendation to the approval body with added conditions especially for a Conditional Use. In this case Staff opened the item to public comment to an agenda item that had just been printed and available allowing public comment, then closed the public hearing to no further comment and only then did they do their presentation again not allowing the public to have any knowledge of the item unless they had prior knowledge and in this case they didn’t. This is essentially the reverse sequence in which this should have happened.

As suspected and confirmed by staff during the hearing they acknowledged a request for rezoning the lot known as 321 Spruce Street back to Light Industrial to allow the owners of 301 Spruce street (the storage) to purchase 321 Spruce street to use as parking for the Storage lot. This clearly stands in the face of the compromise that was reached with the neighbors in 2016. Further this parcel does not meet the minimum lot size of 0.5 acres as aforementioned for L-1 Light Industrial. After nearly an hour of deliberation between the Planning Commission and Staff they voted to delay action on the item until the November 17th Planning Commission to allow time to re-evaluate and discuss conformity and potential conditions that may be placed on the Applicant should it meet the code. This meeting has been published on the Calendar.

DOES THE APPLICATION COMPLY WITH 9-4 and SUBMITTAL REQUIREMENTS?

9-4-2: SUBMITTAL REQUIREMENT TABLES:

A. The following tables have been prepared to simplify the determination of which permits, and regulations apply to a given action, and the information that is required to be submitted to obtain such permits and their associated approvals. The tables are sequential and cumulative. Use them as follows:

- 1. Review the numbered list of activities in [table 1](#) and determine which activity most closely resembles the action you propose to undertake. Note the permits that are required for that activity.*
- 2. Refer to [table 2](#) to determine the documents that **must be submitted** with the various types of permits.*
- 3. Refer to [table 3](#) to see the requirements/content of each drawing, plan or other document that **must be submitted**.*

B. These tables are necessarily simplified and abbreviated and may be modified as needed. Additional information regarding key documents is presented in section [9-4-3](#) of this chapter and may be modified by ordinance as needed.

What the applicant submitted:

Copy of Plat with hand drawn sketch of improvements

Photo of a log cabin siding

Elevations and floor plans from <http://www.kinglogs.com/p/log-home-plans.html> (Pinterest)

What the applicant was required to submit:

TABLE 1		Required Permits/Approvals/Actions																		
		General Plan Amendment (Chap. 5)	Re-Zoning (Chap. 6)	Subdivision (Chap. 9)	Planned Unit Development (Chap. 11)	Plat Amendment (Chap. 9)	Conceptual Design Review (Chap. 8)	Building Permit-Final Review (Chap. 8)	Certificate of Occupancy (Chap. 8)	Certificate of Completion (Chap. 8)	Grading/Trenching Permit (Chap. 10)	Sign Permit (Chap. 14)	Variance (Chap. 11)	Conditional Use (Chap. 11)	Record with County Recorder (Chap. 9)	Tree Removal (Chap. 10)	Staff Review	Land Use Authority Review/Approval	Appeals Body ⁶	
1	Selling or Conveying An existing lot in its entirety (with or without an existing														✓					
2	Creating One new lot per LMC Chap. 9 Minor Subdivision			✓											✓		✓	W	V	
3	Creating more than one new lot to be created from a larger parcel			✓											✓		✓	X1	V	
4	Constructing or modifying a commercial or multi-family residential building on an						✓	✓	✓	E							K	✓	X	V
5	Constructing or remodeling a single-family home on an existing lot						✓	✓									K	✓	W	V
6	Painting all or parts of an existing commercial building						✓	I			F						✓	W	V	
7	Changing the use of a building (such as an office to a store, store to clinic, etc.)	A	B				✓	✓			F		D				✓	W	V	
8	Proposing a use not allowed by current zoning	A	✓				I	I					D				✓	X	V	
9	Grading or constructing a road or driveway								✓	✓							K	✓	W	V
10	Digging and/or installing utilities (water, sewer, septic, gas, electricity, cable tv)								✓	✓							K	✓	W	V
11	Removing trees on a private property																✓	✓	W	V
12	Building a retaining wall						✓	H									K	✓	H	V
13	Installing an exterior yard light						✓	✓									✓	W	V	
14	Installing a new sign or modifying and/or enlarging an existing sign						✓	H			✓						✓	W	V	

Key:

- ✓ Always Required
- A If the intended use is not consistent with the General Plan
- B If the proposed use is not consistent with existing Zoning
- C If greater flexibility is desired than permitted under standard subdivision regulations
- D If proposed use is permitted in the Zone District as a condition upon special review
- E If grading and/or trenching are proposed
- F If signage is proposed
- H As required in Building Code and/or LMC
- I When required by the currently adopted building code
- J An abbreviated review by Building Dept. staff for single family homes
- K If trees greater than 6" diameter at chest height (trunk) are to be removed
- L Only the Sketch Plan submittal is required
- V Appeal Authority
- W Staff
- X Planning Commission
- X1 Planning Commission and Town Council process
- Y Town Council
- Z District Court

(2010 Code, amd. Ord. 15-004, 4-28-2015)

TABLE 2		Submittal Documents Required																
		Application and fee	Title Report	Existing Conditions Map	Development Report	Schematic Subdivision Plat	Preliminary Subdivision Plat	Final subdivision Plat and Associated Required Public Hearing	Development Agreement	Conceptual Construction Plans	Final Construction Plans	Conditional Use Site Plan	Referral Packets	Soils/geology Report	Covenants, conditions and restrictions	Security Agreement	As-Built Drawings	Certificate of Footing Location
1	General Plan Amendment	√																
2	Rezoning	√																
3	Annexation Petition	√																
4	Subdivision Schematic Plat (Including Condominiums)	√	√	√	√	√												
5	Subdivision Preliminary Plat (Including Condominiums)	√				√	√	√					B	√				
6	Subdivision Final Plat (Including Condominiums)	√					√	√							√	√	D	
7	Lot Split	√	√	√	√													
8	Re-plat	√	√	√	√		√					B						
9	Building Permit- Conceptual Design Review	√	√	√	√				√									
10	Building Permit - Final	√								√			√					C
11	Grading and Trenching Permit	√		√						√								
12	Variance	√		√														
13	Conditional Use	√		√	√			√			√	B						
14	Certificate of Occupancy															A	D	
15	Vacation of Easement or Right-of-way	√					√	√				B						
16	Trenching & Tree Removal Permit	√																

Key:

- √ Always Required
 - A If site improvements are not completed at the time of occupancy
 - B Mailing list/labels of the owners of abutting properties located within three hundred feet (300') of the property lines of the land in question
 - C Prior to footing pour
 - D Due at completion of project
- (2010 Code, amd. Ord. 15-004, 4-28-2015)

TABLE 3		Submittal						
		Existing Conditions Map	Subdivision Schematic Plat	Subdivision Preliminary Plat	Subdivision Final Plat and Associated Conditional Use Site Plan	Conceptual Const. Plans- For Design	Final Construction Plans	
1	Project name and subdivision, if applicable	✓	✓	✓	✓	✓	✓	
2	Applicant's name, address, phone number	✓	✓	✓	✓	✓	✓	
3	Preparer's company name, address, phone number	✓	✓	✓	✓	✓	✓	
4	Agent authorization of owner (if not applicant)	✓	✓	✓	✓	✓	✓	
5	North arrow, scale	✓	✓	✓	✓	✓	✓	
6	Legend (for symbols used on drawings)	✓	✓	✓	✓	✓	✓	
7	Vicinity map showing project location relative to Brian Head Town	✓	✓	✓	✓	✓		
8	Site Boundaries with dimensions	✓	✓	✓	✓	✓		
9	Protection area boundaries (wetlands, spring/well protection areas, flood plains)	✓	✓	✓	✓	✓		
10	Existing topography	✓		✓		✓		
11	Slopes over 10%, 25% and 40% identified	✓		✓		✓		
12	Existing vegetation, trees or grouping of trees	✓				✓		
13	Existing roads, including names, grades, pavement widths. Show ROW	✓	✓	✓		✓	✓	
14	Existing utilities, by type, including location and dimension of easements	✓		✓		✓	✓	
15	Existing emergency access, fire lanes, fire hydrants	✓				✓	✓	
16	Footprint of existing structures, with uses indicated	✓				✓	✓	
17	Existing drainage system	✓				✓	✓	
18	Proposed topography			✓		✓	✓	
19	Proposed cut/fill			✓	✓	✓	✓	
21	Proposed vegetation - detailed landscape plan: type, size, spacing (including					✓	✓	
22	Proposed drainage system, including location and dimensions of easements			✓	✓	✓	✓	
23	Proposed utilities, by type, including location and dimensions of easements			✓	✓	✓	✓	
24	Proposed roads - names, grades, pavement widths and ROW			✓	✓		✓	
25	Proposed emergency access, fire lanes, fire hydrant s			✓	✓	✓	✓	
26	Typical cross sections of roads, curbs, gutters, sidewalks			✓	✓		✓	
27	Layout of lots, with lot sizes, setbacks, buildable areas and lot numbers shown			✓	✓		✓	
28	Footprint of proposed structures, with uses indicated					✓	✓	
29	Calculations of site area, building coverage, units, bedrooms, parking spaces					✓	✓	
30	Preliminary construction plans and elevations with general dimensions					✓	✓	
31	Final construction plans with dimensions, elevations, sections, etc.				✓		✓	
32	Layout and dimensions of parking lots, with stalls shown					✓	✓	
33	Designation of snow storage areas			✓	✓	✓	✓	
34	Proposed locations for gas tanks, LP gas, dumpsters					✓	✓	
35	Proposed locations, and types, for signage					✓	✓	
36	Proposed locations for exterior lot and building lighting plan					✓	✓	
36	Final Plat data				✓		✓	
37	Phasing plan			✓			✓	
	Approval Signature of Owner, Town Engineer, Attorney, Manager, Mayor, Utilities and							
39	Waterways or Floodplain Setbacks (Section 12.12 Brian Head LMC)			✓	✓		✓	
40	Designation of "No Build Area" for slopes over 40%			✓	✓			

(2010 Code, amd. Ord. 15-004, 4-28-2015)

Not only are most of these items incomplete, the Referral Packet requires a development schedule and a vicinity map both of which were not included. While the vicinity map may seem trivial it remains a requirement. And the development schedule is largely important especially given the history of the applicant. **Based on this alone the non-conforming Referral Packet deems this application invalid and item should be stricken from the 11-17-20 PC Agenda.**

- C. *Vicinity Map: A map showing the project location relative to the town. The map may be at any legible scale and may be an inset on another plan or drawing (e.g., existing conditions plan). It shall show the town boundaries, major roads (e.g., Highway 143) and minor roads that serve the property. It shall clearly identify where it is located in the town and identify businesses or condominium projects adjacent to the property to indicate the location.*

- D. *Development Report; Statement of Interest:*
 - 1. *The name and location of the property and applicant;*
 - 2. *If the applicant is represented by an agent, a statement from the applicant authorizing the agent to act;*
 - 3. *The name and address of the person, firm or organization preparing the application and a statement indicating the record owner's permission to submit the application;*
 - 4. *An explanation of the purpose of the proposed action and proposed land use, including building descriptions, variations in building setbacks, parking, height or other requirements that are being sought;*
 - 5. *A development schedule indicating the approximate date of the development or stages of the development with expected completion dates;*
 - 6. *Assessment of the availability and capacity of public infrastructure (utilities, roads) to serve the proposed use;*
 - 7. *Any special agreements, conveyances, restrictions or covenants, which will govern the use, maintenance and continued protection of the development and any of its common areas.*

Additional required items of importance are

- 3. *Existing and proposed topography: Show contours at not more than two-foot (2') intervals for areas of less than ten percent (10%) slope and not more than five-foot (5') intervals for areas over ten percent (10%) slope. Such contour maps shall be based on county data. The closest established survey monument shall be used, and its location/elevation noted. Clearly designate the following slope categories:*

0 - 10 percent slopes	0 - 5.7 degrees
11 - 25 percent slopes	6.3 - 14 degrees
26 - 39 percent slopes	14.6 - 21.3 degrees
40 percent and greater slopes	21.8 degrees

4. *Existing conditions (vegetation, roads, utilities, buildings, etc.): In addition to showing existing conditions on the property, also show conditions immediately adjacent to the property as well as the location of any improvements that may be required to be constructed beyond the boundaries of the subdivision or project where applicable.*

6. *Detailed landscape plan: Show all landscaped areas; include plans for walls, patios, fences, trees and other vegetation. Vegetation plan shall include species, variety, number to be planted and size of plant on a legend page. Show areas of lot that will remain undisturbed. The plan shall provide adequate detail to determine planting locations and shall take into account impact of snow storage, and roof snow shed. (2010 Code, amd. Ord. 15-004, 4-28-2015)*

7. *Preliminary construction plans:*
 - a. *Site plans showing footprints of all structures and paved surfaces;*
 - b. *Sections through the structures and the site, with maximum heights noted;*
 - c. *Preliminary elevations (exterior views of the building);*
 - d. *Exhibits to demonstrate compliance with town design standards, chapter 12 of this title, including elevations, and material samples showing textures and color.*

Assuming the Applicant starts over as clearly required under the code. This would not meet the duty of care and benefit and burden as defined in the code and could not be supported on its merits.

9-7-1: R-1 SINGLE-FAMILY RESIDENTIAL states the following:

- A. *Purpose: The R-1 district is intended to provide sites for low density single-family residential uses, together with such public facilities as may be appropriately located in the same district. The R-1 district regulations are intended to ensure adequate light, air, open space for each dwelling, commensurate with single-family occupancy, and, along with the town design standards, to maintain the desirable residential qualities of such sites by establishing appropriate site development standards. Certain nonresidential uses may be permitted as conditional uses, and where approved, are intended to blend harmoniously with the residential character of the district.*

- B. *Permitted Uses: Only the following uses are permitted in the R-1 zone:*
 - *Boarding of horses for non-commercial use, subject to a horse boarding permit.*
 - *Commercial rentals of single-family residences, subject to a business license.*
 - *Home occupations identified in subsection 9-10-5 of this title.*
 - *Single-unit dwellings.*
 - *Other uses customarily incidental and accessory to single-family residential uses, and necessary for the operation thereof (garages or carports, play equipment, or other approved single-family use).*

- C. *Conditional Uses: The following uses are conditional and require a conditional use permit:*
 - *Bed and breakfast rentals.*
 - *Churches.*
 - *Home occupations identified in subsection 9-10-5C of this title.*
 - *Mother-in-law / guest house is an accessory use on one lot that is equal to or greater than one acre and shall comply with accessory structure requirements in this title (Ord. 18-006, 6-11-2018)*
 - *Public or private schools.*
 - *Public parks.*
 - *Public utility uses.*

Home occupations identified in subsection 9-10-5C of this title as recently discovered by way of Ord. 15-018 states the following:

- F. *Conditional Uses: Home occupations which **shall be considered** under subsection C of this section include the following uses, or uses which are similar in character, origin or impact, as determined by the Building Official/Zoning Administrator: (2010 Code, amd. Ord. 15-018, 12-8-2015)*
- *Agricultural uses that involve the keeping of animals, unless in a zoning district where the keeping of such animals is allowed.*
 - *Agricultural uses that use more than twenty five percent (25%) of the area of the lot when the lot is less than one acre in size.*
 - *Kennel, animal hospital.*
 - *Machine shop.*
 - *Light Manufacturing.*
 - *Secondhand shops and pawnshops.*
 - *Storage and warehousing.*
 - *Uses which involve the storage, display or repair of motor vehicles, or body and fender work on such vehicles. (Ord. 08-016, 8-12-2008)*
 - **Snow Removal Services (Ord. 15-018, 12-8-2015)**
 - **Water Transport Services (Ord. 15-018, 12-8-2015)**
 - *(amd. Ord. 17-004, 7-11-2017).*

Because all this hangs on 9-10-5C it is important to review this in context and highlight the dominant emphasis of burden and benefit required.

9-10-5: HOME OCCUPATIONS:

- A. *Purpose: It is the purpose and intent of this section to allow persons residing in dwellings to use their mental or physical expertise and talent in providing a service, developing a product for sale to the public, operating certain kinds of small businesses or maintaining a professional or business office work space **in the dwelling, or in an attached or detached garage** or accessory building, or **yard space**, while at the same time **maintaining the peace, quiet and domestic tranquility within all residential areas of the town**. It is further the purpose and intent of this chapter that home occupations **shall be clearly accessory and subordinate to the principal use of the property for dwelling purposes**.*

The proposal is clearly not accessory and subordinate, rather it dictates a commercial design and layout necessary to deploy all these lot modifications and improvements to house 3 pieces of heavy equipment and attachments on a 20,000 square foot lot. Essentially its reverse engineered around the “off-site commercial use” for heavy equipment storage. Moreover it clearly violates the stated requirement of maintaining the peace, quiet and tranquility of the residential area by deploying large loaders and dump trucks with diesel engines and engine brakes aka “Jake Brakes” I have video of the exact truck coming and going down the hill on Spruce demonstrating the noise from a Jake Brake.

- B. *Permitted Standards For Home Occupations When Conducted Entirely Within Residence: The following standards **shall be observed** in the operation of all home occupations to be approved by town staff:*
1. *The home occupation shall be conducted primarily by residents of the premises. A home occupation may have employees; however, only one employee who does not live in the home may come to the home at any one time for purposes of employment. One*

additional off-street parking stall shall be provided for any employee coming to the home who is not a resident of the premises.

This requires the applicant to be the resident of the premises to conduct its business. Is this the case?

- The home occupation shall not physically change the dwelling or yard space to the extent that it would alter the residential or aesthetic character of the dwelling, yard or neighborhood.**

Again, clearly it physically changes the residential and aesthetic character of the dwelling, yard, and neighborhood which have cabins designed with dominance to the principal use by preserving their lots natural habitat through careful planning and orientation of architecture and civil engineering. No one would have this level of improvements for a cabin in the woods as is evidenced by the existing cabins. This lot is too small to conform to this plan. Especially clearing 20% of the trees for a commercial driveway.

Most importantly the natural drainage is to the Northwest directly onto my lot and I had up to 1" of water in my Garage floor during the melt until I installed a small French drain to intercept my snowmelt. Based on the applicants plan and his proposed drainage and when this is cleared, and snow is stockpiled on the lot it will add more drainage onto my lot than it can handle and flood my garage again. At a minimum any new development would need to do a drainage study to make sure this doesn't happen.





3. *The home occupation shall be allowed one nameplate sign, which shall be consistent with chapter 14 of this title. Temporary signs shall not be permitted for home occupations.*
4. *The home occupation **shall not generate pedestrian or vehicular traffic in excess of that customarily associated with the zone in which the use is located**, as determined by the zoning administrator and appropriate regulatory authorities. "Occupancy load", as defined by the currently adopted building code, shall not be exceeded.*

The pedestrian, car, atv and snowmobile traffic is barely working and arguably with 23,000 vehicles (mostly OHV's) recorded over 9 days this July, this is going the wrong direction for Spruce Street now adding heavy loaders and trucks coming and going from this lot.

5. *The home occupation shall not cause a demand for municipal or utility services or community facilities in excess of those usually and customarily provided for residential use, as determined by the Zoning Administrator and appropriate regulatory authorities.*
6. *Sale of commodities produced on the premises shall be permitted. The sale of all commodities shall be by prior individual invitation only.*
7. *Home occupations shall conform to business license requirements of title 3 of this code.*
8. *There shall be complete conformity with all applicable Town, County, State and Federal laws and ordinances.*

C. *Conditional Use Standards For Home Occupations Using Attached Or Detached Garages, Accessory Structures Or Yard Space: The following standards **shall be observed** in the operation of all home occupations using garages, other accessory structures or yard space, which shall be approved by conditional use, **in addition to the standards specified in subsection B** of this section:*

1. *An occupation **may** be considered as a conditional use **only under** the following conditions:*
 - a. *The Planning Commission finds that the proposed home occupation will be **clearly accessory and subordinate to the principal use of the property for dwelling purposes**; and*

May and Shall as defined by Title 9-1-4 B.) "**shall**" is always mandatory and "**may**" is always permissive (Ord. 15-004, 4-28-2015). This is important as you continue in the analysis.

- b. *The Planning Commission finds that **the proposed home occupation will not adversely affect the residential nature and aesthetic quality of the neighborhood**; and*

Again, clearly it physically changes the residential and aesthetic character of the dwelling, yard and neighborhood which have cabins designed with dominance to the principal use by preserving their lots natural habitat through careful planning and orientation of architecture and civil engineering. No one would have this level of improvements for a cabin in the woods as is evidenced by the existing cabins. A use that requires a commercial driveway to extend through the site claiming 20% of the trees? This lot is too small to conform to this plan. And remember this is Considering a Use Permit from an applicant that has a history of not performing so when reviewing this in its entirety it has to be fully reviewed for what's going to happen with clearing and grading, drainage, and more importantly the next owner that succeeds this applicant. Will the residence that's being built that is not the primary purpose, be a well-designed layout and orientation for the future? Who wants their front yard facing the Grand Lodge and who wants their master bedroom facing the Garage? Again, this lot is too small to do what's intended by the applicant.

- c. *Any off-street parking displaced by the home occupation is relocated elsewhere on the lot or parcel; and*
- d. **The Planning Commission may impose any conditions it deems necessary to mitigate impacts of the home occupation on the neighborhood.**

The applicant states that he “wasn’t able” to build on 262 Quakie during the 2 years afforded under that CUP and that he feels this property provides a better location for the service he provides. That location serves cabins that don’t have municipal water. All of the cabins in the vicinity of Spruce have municipal water again creating excess traffic on a “long-haul” through non-served neighborhoods. He purchased that lot in 2005, cleared it to store equipment and never built a residence. Subsequently he just sold that lot on 9/16/20. Planning Commission must deny this or it’s just more of the same. The Under a Conditional Use the Burden must not outweigh the Benefit on all merit of the code. Adding the same conditions as before didn’t provide any assurances. Based on the magnitude of the proposed application this can’t be mitigated with conditions while still satisfying the code stipulations. The application would need to be pared-back significantly to a design that is the primary function and purpose of R-1 Zoning and in doing so would require a scaled down proposal to what is currently allowed in R-1 which is **One** piece of heavy equipment with 2 attachments. This is the only plan that fits on 20,000 square feet. Additionally the siting and orientation of the structures should be consistent with the lot size, utilizing design features such as a tuck under garage with residential above and a short residential driveway to the garage to reduce the foot print while ensuring that the next owner will benefit from the stated purpose in the code for development standards. The Burden can’t outweigh the Benefit when considering commercial “off-site” uses to intrude into historic neighborhoods. If this was to be considered on a larger lot which could accommodate the level proposed, special care needs to be given ensuring that enforcement provisions are in place to avoid a “strip and cleared” lot and no cabin. Examples should include a bond of 125% of the improvement value, careful review of final building plans, especially grading and landscape plans and definitely a Certificate of Occupancy is required before it should be effective. Hours of use should be daytime only no other Home Occupation uses operate outside the home in non-daytime hours. The applicant stated he will utilize engine block heaters so no idle time should be permitted. The applicant can’t haul water from this lot so that should be excluded and limited again to **one piece** of snow removal equipment and 2 attachments. It should be limited to winter months say October 1- May 30 and not summer months to avoid doubling up on grading services being deployed from this lot. The applicant stated that he services snow removal in the spruce neighborhood then its only necessary to allow one piece of equipment. Moreover 10 neighbors are opposed to this and these are his clients.

- 2. In **determining whether to grant a conditional use approval** for the use of an attached or detached garage, accessory structure or yard space for a home occupation, the Planning Commission **shall consider the effect of such use on the residential character of the property upon which the home occupation is proposed to be located. In making a determination, the Planning Commission may consider factors including, but not limited to:**
 - a. **Displacement of normally residential functions of yard space and building or structure usage;**
 - b. **The potential for generation of noise, dust, vapors, fumes, odors and light;**
 - c. **The potential for generation of excess traffic;**
 - d. **The potential impact of the proposed home occupation on the aesthetic quality of the neighborhood and the property upon which the home occupation is proposed to be located.**

Because “shall” means mandatory by definition in the code it becomes impossible to conclude that this proposed use meets the above referenced requirements for the following reasons.

Is clearly not subordinate to the primary use.

It clearly displaces normal residential functions and uses

It clearly generates noise, dust, vapors fumes, and odors beyond the primary use. This area of Spruce the dust and fumes from traffic drifts in a west to a southwesterly direction today inundating us with dust. We just planted \$5k of 12 mature native trees to help combat this but it won't mitigate vapors fumes and orders. In the winter the diesel fumes from heavy equipment settles due to inversion and will be forever detrimental to our air quality. There won't be enough trees left to buffer our homes from the noise not only from the heavy equipment but the exhaust fans that run continuously from the North side of Best Western. Currently it sounds like a sawmill is running 24/7 just beyond the trees. Which I would request everyone take time to come to my home and physically verify. Any acoustical study will prove that the proposed development overloads the 20,000 square foot lot and leaves little buffer left to further exacerbate this condition. I have a recent video of this that is included with this response, but it warrants staff and Planning Commissions review this matter specifically along with the drainage for any development.

This is and has been a Historic Neighborhood. My cabin was built in 1970 and is one of the first cabins on the mountain. It still has working propane lights. It is a/the Historic landmark. Every one of the locals refers to it as the “70's Cabin”. We've invested over \$200,000 over the last several years in transforming and restoring this cabin while maintaining its original and historical character.



- 3. Due to the special nature of home occupations, their potential to create adverse impacts to the neighborhood, and the potential for significant unforeseen impacts to occur, the Planning Commission reserves the right to review any home occupation granted conditional use approval pursuant to this subsection. The conditional use permit for the home occupation may be reviewed and modified or revoked by the Planning Commission due to failure of the owner or operator of the home occupation to observe all conditions specified in issuing the permit; failure to observe the purpose and intent of this section or other requirements of this title in regard to the maintenance of improvements and conduct of the home occupation as approved; or significant unforeseen impacts resulting from the operation of the home occupation in conflict with the purpose and intent of this section and as explained in the application.*

D. *Permitted Uses: Home occupations **which may be considered** under subsection B of this section may include the following uses, or uses which are similar in character, origin or impact, as determined by the Building Official/Zoning Administrator:*

*Animal grooming services conducted entirely within the home.
Architectural service.
Artist, author.
Barber shop, beauty service.
Childcare services in compliance with state and federal standards.
Consulting service.
Craft sale.
Dance studio; aerobic exercise, music lessons, tutoring and general educational instruction.
Data processing, computer programming.
Direct sales distribution.
Food preparation in compliance with state and federal standards.
Garden plants and produce.
Home crafts.
Insurance sales or broker.
Interior design.
Janitorial service.
Mail order (not including retail sales from site). Real estate sales or broker.
Sales representative.*

E. *Conditional Uses: Home occupations **which shall be considered** under subsection C of this section include the following uses, or uses which are similar in character, origin or impact, as determined by the Building Official/Zoning Administrator: (2010 Code, amd. Ord. 15-018, 12-8-2015)*

Agricultural uses that involve the keeping of animals, unless in a zoning district where the keeping of such animals is allowed.

Agricultural uses that use more than twenty five percent (25%) of the area of the lot when the lot is less than one acre in size.

Kennel, animal hospital.

Machine shop.

Light Manufacturing.

Secondhand shops and pawnshops.

Storage and warehousing.

Uses which involve the storage, display or repair of motor vehicles, or body and fender work on such vehicles. (Ord. 08-016, 8-12-2008)

Snow Removal Services (Ord. 15-018, 12-8-2015)

Water Transport Services (Ord. 15-018, 12-8-2015)

(amd. Ord. 17-004, 7-11-2017).

I charge that Town Council clearly didn't intend to grant blanket approval by virtue of a CUP of noxious uses that were specifically and purposefully excluded prior to adoption of *Ord. 15-018*. *Whereby the permitted uses "May be" considered and the more invasive uses "Shall be" considered?* It was clearly the intent of the town to find a solution to work with commercial vendors that provide snow removal and water hauling services but unfortunately may have established precedent for being forced to accept all the above listed uses. This needs immediate attention to avoid the unintended consequences that will

come. I urge the Town to immediately adopt an emergency ordinance putting a moratorium on Conditional Uses that are under review pursuant to *Ord. 15-018* until such time that a new and comprehensive study can be conducted. I suggest forming an ADHOC committee, including but not limited to staff, residents, and stakeholders to review and compile a better solution rather than what has been adopted. Several factors need to be considered and written into the revised Ordinance if this is to succeed in a harmonious nature. Consideration needs to be given to lot size minimums. These contractors can afford to purchase the larger lots in areas that are level and don't already have environmentally sensitive factors. The best underutilized asset in town is the Cedar Breaks Lodge Maintenance Yard. The City could pass a special assessment bond to purchase this and lease it back to contractors to "solve the problem" rather than create new ones. I'd gladly pay a small tax to help this cause and the bond holders would be paid back with interest and the City would have a performing asset. *"Improve the first impression of Brian Head" (2021 Brian Head Strategic Plan)* This is the Gateway to the town, and it would clean it up rather than destroying residential historical R-1 neighborhoods. Just like you did with the Meadow when you took a survey on what the citizens wanted to see. I doubt they would like to see more industrial uses than currently exist when coming into town. The hill has a natural buffer which was weighed in the decision in 2016 to prevent the commercial from creeping beyond 301 Spruce.

The following will identify some of the issues that rub against the current code for Home Occupations further exposing the eminent issues and conflicts that are evident.

Prior to *Ord. 15-018* the only opportunity for heavy equipment allowed on a Residential Lot are listed as follows and this is only after a building permit has been issued and a certificate of occupancy has been granted:

9-7-1: R-1 SINGLE-FAMILY RESIDENTIAL

11. One piece of heavy equipment along with two heavy equipment attachments may be kept on premises for non-commercial use, such as private snow removal or light excavation. The equipment shall be parked in a place and manner so as to be reasonably screened from view from 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. (Ord. 16-007, 11-08-2016)

Title 9 of the Land Management Code is clearly intended to protect and preserve the environment of the residents. Primarily the focus should be on preserving the natural habitat we have left. Trees have been in peril even before the 2017 wildfire that cleared 77,000 acres of forest habitat. I remember skiing and mountain biking 30 years ago before the bark beetle ravaged the landscape. We've only seen 4 days of measurable rainfall since the last snow. The code is very clear on the protection of trees and lot clearing to avoid the old days of scraping a lot to build on.

The following are references to the Town of Brian Head's mission statement and are very intentional and purposeful.

9-1-3: STATEMENT OF PURPOSE: *The purposes of this title, and any rules, regulations and specifications hereafter adopted are to promote the public health, safety and general welfare through provisions designed:*

- A. *To preserve the natural beauty and topography of the town and to preserve the outstanding natural, cultural or historical features, to ensure appropriate development with regard to these features and to assure the proper use and management of the natural beauty and resources of the town;*
- E. *To prevent the pollution or degradation of air, streams, and ponds; to ensure the adequacy of drainage facilities; to safeguard the water table; to minimize site disturbance, removal of native vegetation and soil erosions; and to encourage and promote the conservation, wise use and management of natural resources throughout the town in order to preserve the integrity, stability and beauty of the community and value of the land;*

9-12-3: DEVELOPMENT DESIGN AND LAYOUT:

- J. *Preservation of Features: Where trees, groves, waterways, scenic points, historic spots or other town assets and landmarks exist, as determined by the town, every possible means shall be provided to preserve these features. The development is encouraged to maintain a minimum of twenty percent (20%) of the lot area in natural vegetation in order to preserve the natural environment and topography or demonstrate to the Planning Commission satisfaction that an alternate plan will satisfy this intent. Undisturbed natural vegetation areas that are shown on the approved plan shall be properly marked and protected against damage.*
- K. *Placement of Buildings: The placement of buildings shall be designed to preserve the natural terrain, drainage, existing topsoil, tree groupings, large trees and large rocks as much as possible so as to screen the building and parking areas from public view.*

Brian Head Sustainable Recreation and Tourism Plan –

One of the major purposes of the framework is to prevent conflicts between recreation opportunities by identifying key areas of similar user experience. In the plan we call these “gravity areas”. Some recreational activities do not complement each other. A good example is OHV use, which is often loud; and activities such as bird watching, which requires solitude. The two activities cannot exist together without competing and causing conflict. If stakeholders reference the identified gravity areas within this framework when making decisions, then future conflicts can be avoided and recreation opportunities can grow.

This concept is the same and this is a Gravity Area

“Foster a stronger sense of community and well-informed public discourse” (2021 Brian Head Strategic Plan)

In summary this should not be allowed to continue due to the non-compliant and incomplete application and the non-qualifying Referral Packet combined with the issues with the published code and meeting calendar. Should the applicant return with a complete application the Planning Commission should act on their fair and accurate review that it does not meet the requirements as outlined herein and as full authority to deny the Conditional Use for these reasons. There at least 10 neighbors that have submitted to the record formal objections.

“Upon receipt of the town staff and other applicable agency recommendations, and input from the public hearing, the Planning Commission shall review the project and may impose reasonable conditions of approval which are designed to mitigate the reasonably anticipated detrimental effects of the proposed use. If the applicant accepts the conditions imposed, the Planning Commission may grant the conditional use permit. *If the reasonably anticipated detrimental effects of the proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the Planning Commission may deny the conditional use.*”

We are supportive and welcome having new neighbors especially the applicant but it's extremely important to enforce the code and only approve development that's allowed with special attention paid to maintaining the natural program we have inherited. It is apparent from the application information which we received that shows hand sketches of a cabin and plans from Pinterest that requirements listed in Chapter 4 and Tables 2 and 3 under 9-7-10 for those allowed by conditional use, that the criterion was not met. It clearly lists a volume of studies and plans that are required which were not performed. Most importantly for any application to avoid physical damage to my garage, a grading and drainage study is necessary since it drains directly onto my property a topo survey with required contours and specific civil engineering with proposed grades and finished floor elevations are necessary.

Lots 321 and 339 are the only natural buffer left to protect our neighborhood and adjacent to our property that was one of the original cabins built in 1970 and we have spent the last 6 years pouring hard work and money into preserving and transforming this cabin. We have become subject to the increased intensity of the OHV's that whip down Spruce Street. The city staff has recently taken aggressive steps to engage the community and neighbors this year to get out in front of this issue and recently applied recycled asphalt to the surface and will be implementing more aggressive measures next season with signage, hopefully 10 MPH limits, education through social media and public outreach and yes punitive citations to establish that Brian Head is special and is not intended to ever become what's transpired in Duck Creek.

Thank you for your consideration and the work that you do to keep Brian Head Special.

Sincerely

Don and Danielle Cape



cc: Council Members (Calloway, Freeberg, Mulder, Marshall) via email.



CONDITIONAL USE PERMIT

APPLICANT: Mike Carr
PROPERTY: 339 West Spruce
ZONE: Single Family Residential
USE: Home Occupation, Snow Removal & Water Transport
DATE APPROVED: November 17, 2020

In accordance with §9-11-2 of the Brian Head Town Code, the following conditions are required to be met for the above-referenced use at the above-referenced location in order to assure compatibility and harmonious relationships between the proposed use and the surrounding properties and the town in general. Conditional use approval may be revoked upon failure to comply with all conditions set forth in this conditional use permit.

Reasonably anticipated detrimental effects:

1. Traffic congestion
2. Air and noise pollution
3. Visual impact to neighbors
4. Impact on the character of the neighborhood

Recommended conditions for mitigation of anticipated detrimental effects:

1. The applicant will construct a single-family residential structure with a large garage sufficient to store recreational vehicles. The structure will be strictly consistent with all requirements for a single-family residential structure, which will be its ongoing primary use.
2. The Conditional Use Permit is not effective until a Certificate of Occupancy is obtained.
3. Only 2 pieces of heavy equipment are allowed (parked inside a garage).
4. Screening will be applied for all equipment.
 - a. Screening: All outdoor storage of machinery and equipment shall be screened from the public view as seen from any public roadway. Existing trees and landscaping along with building orientation (according to site plan included in Exhibit A) are acceptable methods to minimize the adverse visual impacts.
 - b. Any change to orientation of the buildings from site plan in Exhibit A must be reviewed by Planning Commission to ensure sufficient screening remains.
5. Equipment cannot exceed an idle time of 5 minutes between 10pm and 7am, and no backup alarms will be used on premises.
6. Maintenance, fueling, and repairs to equipment will be done inside the garage.
7. Applicant will not damage snowmobile trail with equipment.
8. Equipment will yield to snowmobile traffic on Spruce.



STAFF REPORT TO THE PLANNING COMMISSION

SUBJECT: Conditional Use Permit – 339 W. Spruce Street
AUTHOR: Wendy Dowland
DEPARTMENT: Administration
DATE: November 17, 2020
TYPE OF ITEM: Legislative Action

SUMMARY:

The Planning Commission will review a Conditional Use Permit application for 339 W. Spruce Street. The applicant is applying for the Conditional Use for the home occupation of snow removal and water transport services. The applicant would like to store more than one piece of equipment on the property.

BACKGROUND:

The applicant previously applied for and was granted a Conditional Use Permit for the property located at 262 E. Quakie Drive in 2016. One of the conditions of the permit was that the approval would expire if a building permit was not acquired within two years. The applicant was unable to build during the required time frame and has since purchased property on Spruce Street. The applicant feels that this property provides a better location for the service he provides. The Commission held a public hearing and tabled the application during the October 20, 2020 meeting.

ANALYSIS:

The Standards for Review for a Conditional Use are as follows (LMC Chapter 11):

D. Standards for Review:

1. No conditional use permit may be issued unless the Planning Commission finds that the application meets the following standards and conditions:
 - a. Protects the safety of persons and property:
 - (1) Will not result in unreasonable traffic congestion or traffic hazards;
 - (2) Has adequate and necessary access for municipal services.
 - b. Will not exceed the obligations and/or financial capability of the town and will not require a level of community facilities and services greater than that which is available or which may be provided.
 - c. Will protect environmental values:
 - (1) Will not cause unreasonable air, water, groundwater, light or noise pollution;
 - (2) Does not have critically expansive soils, high water table, slope instability, or other soil problems which cannot be mitigated.
 - d. Consistent with the town General Plan:
 - (1) Will comply with the requirements of the zoning district in which the use is to be established and with all other requirements of this title;
 - (2) Will be compatible with the character of the neighborhood and surrounding structures in scale, mass and traffic circulation.
 - e. The applicant has assured performance of obligations by posting bond or other adequate security as determined necessary by the Planning Commission per [chapter13](#) of this title.

2. With its approval, the Planning Commission may impose such conditions and safeguards to ensure compliance with the requirements, standards or conditions of this section. The violation of any condition, safeguard or commitment of record by the applicant shall be sufficient grounds for revocation of conditional use approval.

Staff Review: The applicant is in the process of submitting for a building permit. The single family home meets the zoning and design guidelines for a R1 lot. The proposed property is located in the buffer area between Single Family and Light Industrial. In order to mitigate the impact between the two zones, the applicant has agreed to put the driveway and parking on the east side of the property. The home and undisturbed trees will provide screening for the Single Family neighborhood to the west and south, while also providing screening from the street.

STAFF RECOMMENDATION:

After meeting with the adjacent property owners and reviewing the Commission's input, staff has compiled a list of possible detrimental effects and conditions to mitigate those effects. See attached.

PROPOSED MOTION:

I move to approve the Conditional Use Permit for 339 W. Spruce Street with the following attached conditions:

ATTACHMENTS:

Site Plan
Proposed Conditions

MONTAIR EVERGREEN
ESTATES
BLOCK D, LOT 5

PROPERTY LINE
164 FT

20'
SETBACK

PROPERTY LINE
217 FT

21'
SETBACK

DRIVEWAY

CABIN

GARAGE

2% MIN
SLOPE

5% MIN
SLOPE

5% MIN
SLOPE

26'
SETBACK

DRIVEWAY

2% MIN
SLOPE

25'
SETBACK

PROPERTY LINE
150 FT

SPRUCE STREET

SITE PLAN
1/8" = 1'-0"



BUILDING PERMIT 7/12/21

THE
MONTAIR EVERGREEN ESTATES
BLOCK D, LOT 5

LOCATION
330 WEST SPRUCE STREET
BRIAN HEAD, UTAH



GEN
ENGINEERING, INC.
480 North Avenida Hwy
Cedar City, UT 84713
Tel: (435) 867-1372
www.genengineering.com

ORIGINAL SITE PLAN

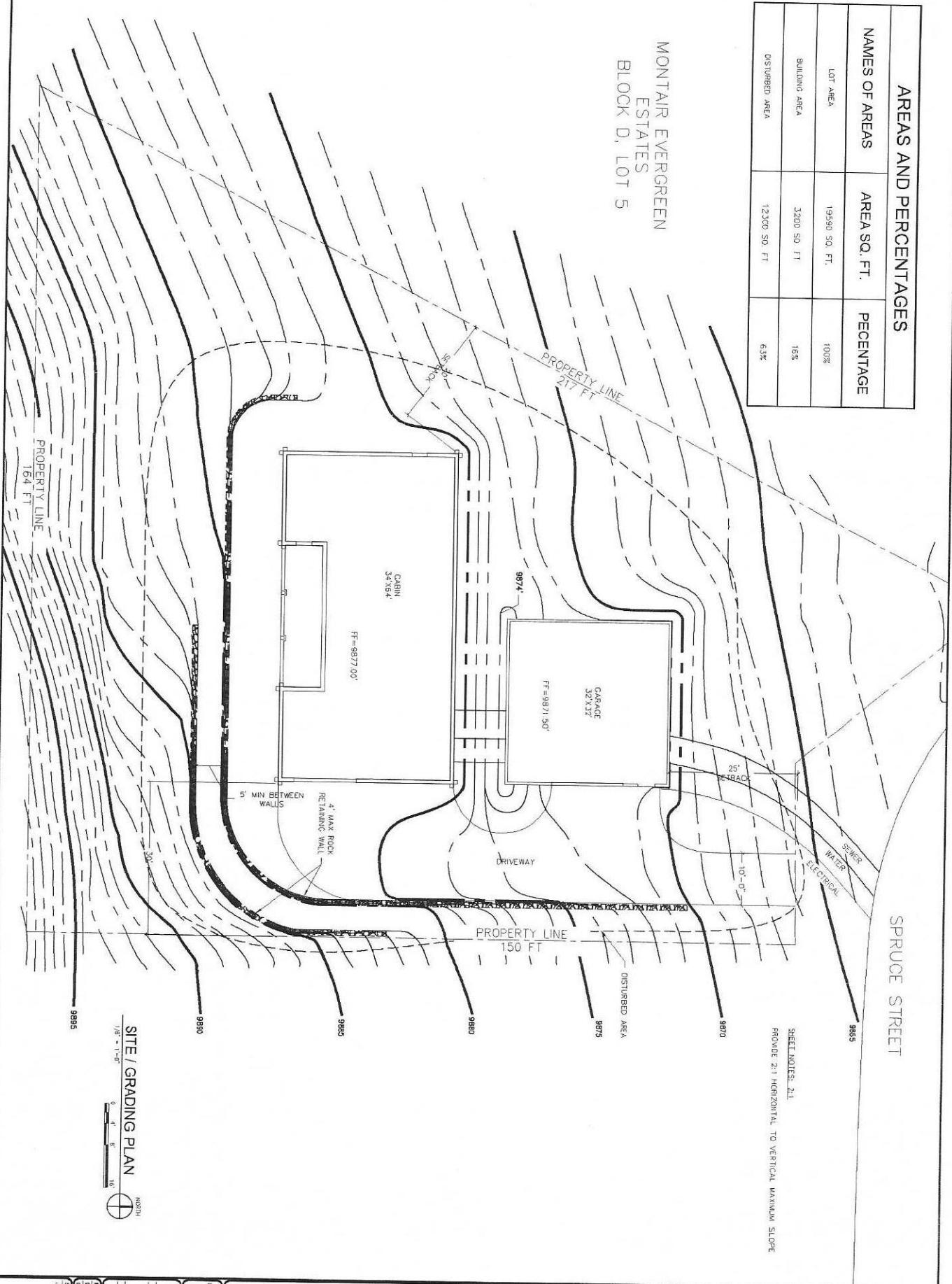
~~10/3/2020~~

SP-001

PROJECT NO.	DATE	DESCRIPTION
1	7/12/21	BEST BDC
2		
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AREAS AND PERCENTAGES		
NAMES OF AREAS	AREA SQ. FT.	PERCENTAGE
LOT AREA	19990 SQ. FT.	100%
BUILDING AREA	3200 SQ. FT.	16%
DISTURBED AREA	12300 SQ. FT.	63%

MONTAIR EVERGREEN
ESTATES
BLOCK D, LOT 5



SPRUCE STREET

SHEET NOTES: 211

PROVIDE 2:1 HORIZONTAL TO VERTICAL MAXIMUM SLOPE

SITE / GRADING PLAN

1/8" = 1'-0"

0 5 10'



TITLE
MONTAIR EVERGREEN ESTATES
BLOCK D, LOT 5

LOCATION
334 WEST SPRUCE STREET
BRIAN HEAD, UTAH

THE ENGINEER'S SEAL AND SIGNATURE SHALL BE PLACED IN THIS SPACE. THE SEAL SHALL BE IN THE FORM OF A RECTANGLE AND SHALL BE PLACED TO THE RIGHT OF THE SIGNATURE. THE SIGNATURE SHALL BE PLACED TO THE LEFT OF THE SEAL.



GEM
ENGINEERING, INC.
485 South Avondale Way
Cedar City, UT 84721
Phone: (435) 867-6478
Fax: (435) 867-4872
www.gemengineering.com

NO.	DATE	DESCRIPTION

NO CHANGES TO BE MADE TO THIS PLAN WITHOUT THE WRITTEN APPROVAL OF THE ENGINEER.

SCALE: 1/8" = 1'-0"

DATE: 08/11/2014

DESIGNED BY: RWT

CHECKED BY: RWT

DRAWN BY: RWT

SCALE: 1/8" = 1'-0"

DATE: 08/11/2014

PROJECT: MONTAIR EVERGREEN ESTATES BLOCK D, LOT 5

SHEET NO. SP-001



STAFF REPORT TO THE PLANNING COMMISSION

SUBJECT: Building Orientation - 339 W. Spruce Street
AUTHOR: Wendy Dowland
DEPARTMENT: Administration
DATE: August 17, 2021
TYPE OF ITEM: Legislative Action

SUMMARY:

The Planning Commission will review a change to the building orientation of the garage entrance for 339 W. Spruce Street. The applicant would like to place the garage on an angle and have the garage entrance on the north side of the property instead of the east side of the property. This will enable the applicant to preserve the trees on the east property line.

BACKGROUND:

The Planning Commission granted the Conditional Use Permit for 339 W. Spruce Street in November of 2020. Under condition number 4.b. it states that “any change to orientation of the buildings from the site plan in Exhibit A, must be reviewed by the Planning Commission to ensure sufficient screening remains.” After obtaining a building permit and preparing the building pad, the applicant realized the current garage entrance would require the removal of a much larger area of trees.

ANALYSIS:

Findings of Fact:

1. *The single-family home meets the zoning and design guidelines for a single-family residential lot.*
2. *The proposed property is in the buffer area between Single Family and Light Industrial.*
3. *Most garages within Brian Head face the street.*
4. *The home and undisturbed trees will provide screening to the west and south, while also leaving trees to the east.*
5. *All conditions of the Conditional Use Permit still apply.*

STAFF RECOMMENDATION:

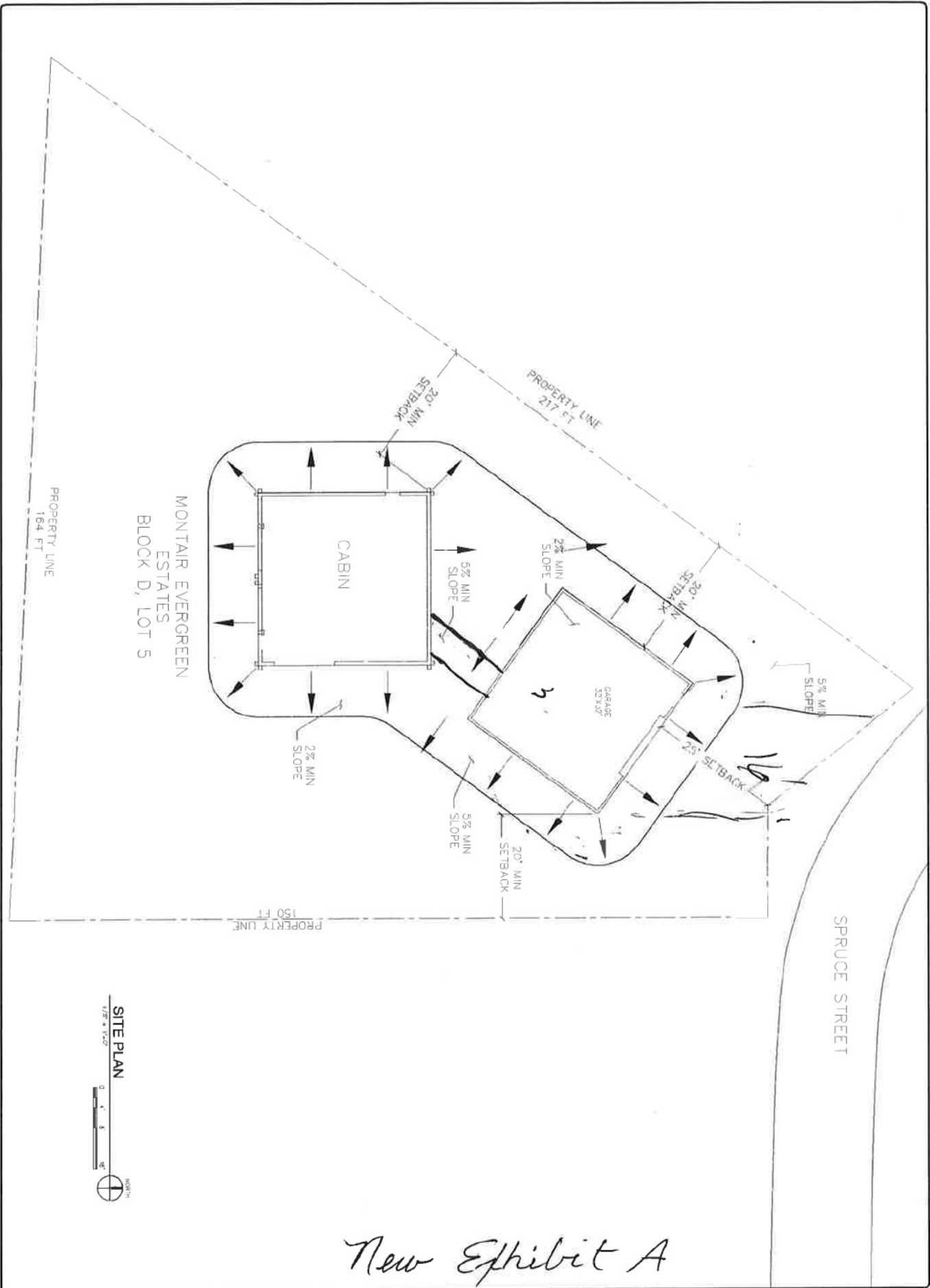
Staff recommends allowing the garage entrance to face the street. This is a normal building orientation for single-family homes and the undisturbed trees offer a natural buffer.

PROPOSED MOTION:

I move to approve the change to the building orientation and accept the new building orientation as “Exhibit A” of the Conditional Use Permit for 339 W. Spruce Street.

ATTACHMENTS:

Site Plan
Pictures



New Exhibit A

**MOUNTAIR EVERGREEN ESTATES
BLOCK D, LOT 5**

LOCATION
339 WEST SPRUCE STREET
BRIAN HEAD, UTAH

NO.	DATE	DESCRIPTION

PREPARED BY: [Name]
 CHECKED BY: [Name]
 DATE: [Date]
 SCALE: [Scale]
 SHEET NO. SP-001



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 www.gemeng.com







STAFF REPORT TO THE PLANNING COMMISSION

SUBJECT: Building Orientation - 339 W. Spruce Street
AUTHOR: Wendy Dowland
DEPARTMENT: Administration
DATE: December 7, 2021
TYPE OF ITEM: Legislative Action

SUMMARY:

The Planning Commission will review a change to the building orientation of the cabin and garage for 339 W. Spruce Street. The applicant would like to build the home on top of the garage instead of to the south of the garage. This will enable the applicant to preserve the trees on the south side of the property and add screening from the adjacent properties.

BACKGROUND:

The Planning Commission granted the Conditional Use Permit for 339 W. Spruce Street in November of 2020. Under condition number 4.b. it states that "any change to orientation of the buildings from the site plan in Exhibit A, must be reviewed by the Planning Commission to ensure sufficient screening remains." After obtaining a building permit and preparing the garage pad, the applicant realized that the cabin would eliminate too many trees to the south of the property. There is currently an open gap for the power line and eliminating the trees will leave the applicant with no privacy.

ANALYSIS:

Findings of Fact:

1. *The single-family home meets the zoning and design guidelines for a single-family residential lot.*
2. *The proposed property is in the buffer area between Single Family and Light Industrial.*
3. *The home still meets the Land Management Code for Single Family Residential zoning.*
4. *The home and undisturbed trees will provide screening to the west and south, while also leaving trees to the east.*
5. *All conditions of the Conditional Use Permit still apply.*

STAFF RECOMMENDATION:

Staff recommends allowing the home to be built on top of the garage. This is a normal building orientation for single-family homes and the undisturbed trees offer additional screening.

PROPOSED MOTION:

I move to approve the change to the building orientation and accept the new building orientation as "Exhibit A" of the Conditional Use Permit for 339 W. Spruce Street.

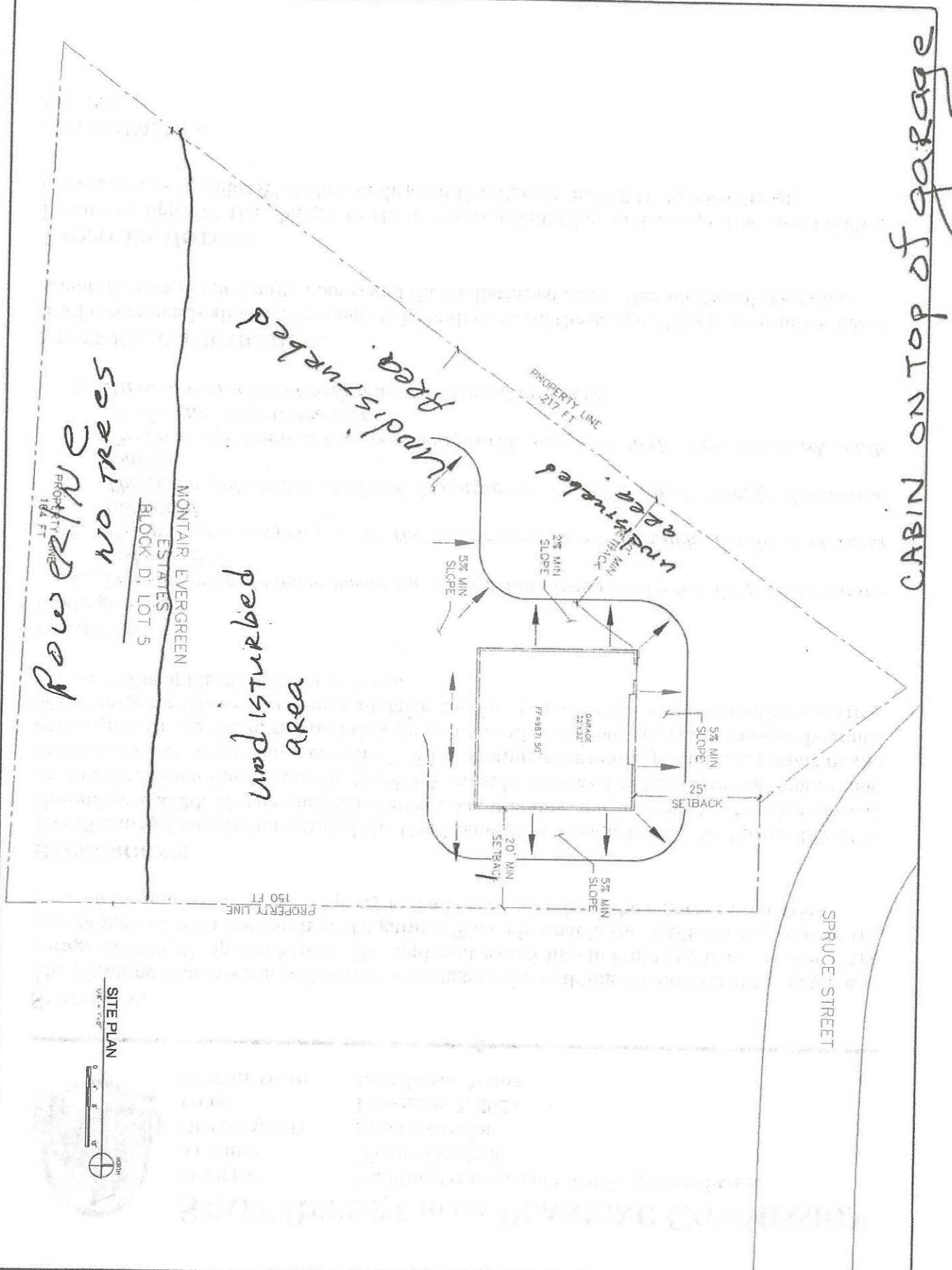
ATTACHMENTS:

Site Plan

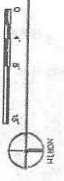
CABIN ON TOP of garage

Row of trees
no trees

undisturbed area
undisturbed area



SITE PLAN



**MOUNTAIR EVERGREEN ESTATES
BLOCK D, LOT 5**

LOCATION
334 WEST ASPEN STREET
1800 WEST 10TH AVENUE



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NO. OF SHEETS	1
SHEET NO.	SP-001
DATE	08/11/2011
DESIGNED BY	SP-001
CHECKED BY	SP-001
DATE	08/11/2011
PROJECT NO.	SP-001
PROJECT NAME	MONTAIR EVERGREEN ESTATES BLOCK D, LOT 5
CLIENT	SP-001
DATE	08/11/2011
SCALE	AS SHOWN
BY	SP-001
CHECKED BY	SP-001
DATE	08/11/2011



April 21, 2022

Iron County Building Department
82 N 100 E
Cedar City, Utah 84720

Iron County Building Department,

Applicant Mike Carr located on 339 W. Spruce Street, Brian Head, UT 94719 submitted a Building Orientation Review on December 7, 2021 to Brian Head Town's Planning Commission. He requested that the Planning Commission approve the following changes to his cabin:

1. Move the cabin from the south side of the lot,
2. Identify the living space above the garage instead to create a reduction in the footprint of the building and allow for more trees to remain on the property,
3. Move the driveway and replace it with a deck and sidewalk, and
4. That the garage will be twelve feet (12') in width which is identified in the conditional use permit to allow for the heavy equipment to be parked within the garage.

The only changes made are in the design of the home, not the orientation of the lot. The Planning Commission made a motion to approve the new building orientation application as presented. The motion carried 5-0-0.

The Town of Brian Head has therefore approved the changes made to Mike Carr's cabin on 339 W. Spruce Street.

Respectfully,

Rebecca Bennett

Rebecca Bennett
Town Planner
Brian Head Town



MONTAIG EMBERGREEN ESTATES
BLOCK D, LOT 5

LOT 5 CABIN #1
11,400 SQ. FT.

SNOW STORAGE

SPRUCE STREET
SHEET

SITE PLAN

1/8" = 1'-0"



MEADOW LAKE ESTATES CABIN

LOCATION:
539 W SPRUCE STREET, BRIAN HEAD, UT

STATE OF UTAH
COUNTY OF KANE
PLANNING AND ZONING DEPARTMENT
RECEIVED
2014 JUN 11 AM 10:00
PROJECT NO. 14-001
SUBJECT: MEADOW LAKE ESTATES CABIN #1



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NO.	DATE	REVISION
1	7/28/21	FINAL REVISION
2	8/28/24	FINAL REVISION
DESIGNED BY	SCALE	
CHECKED BY		
DATE		
PROJECT NO.		
DRAWING TITLE		
SHEET NO.		
SHEET TOTAL		