



**PARK CITY BOARD OF ADJUSTMENT MEETING
SUMMIT COUNTY, UTAH
July 12, 2022**

MEETING CALLED TO ORDER AT 5:00 PM.

1. ROLL CALL

2. MINUTES APPROVAL

- 2.A Consideration to Approve the Board of Adjustment Meeting Minutes from May 17, 2022.
[BOA 05.17.2022 Minutes - Pending Approval](#)

3. PUBLIC COMMUNICATIONS

4. STAFF AND BOARD COMMUNICATIONS AND DISCLOSURES

5. REGULAR AGENDA

- 5.A **51 Daly Avenue - Variance** - The Applicant Requests Variances from the Front and South Side Setback and Maximum Building Height on a Non-Historic Single-Family Dwelling in the Historic Residential (HR-1) Zone. PL-22-05280 (45 min)
(A) Public Hearing (B) Action
[51 Daly Avenue Staff Report](#)
[Exhibit A: Draft Final Action Letter](#)
[Exhibit B: Applicant's Variance Narrative](#)
[Exhibit C: Site Plans and Survey](#)
[Exhibit D: 1992 LMC HR-1 Zone](#)
[Exhibit E: 1992 LMC Exceptions](#)

6. ADJOURN

Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the Planning Department at 435-615-5060 or planning@parkcity.org at least 24 hours prior to the meeting.

***Parking is available at no charge for Council meeting attendees who park in the China Bridge parking structure.**

Board of Adjustment Agenda Item Report

Meeting Date: July 12, 2022

Submitted by: Levi Jensen

Submitting Department: Planning

Item Type: Minutes

Agenda Section: MINUTES APPROVAL

Subject:

Consideration to Approve the Board of Adjustment Meeting Minutes from May 17, 2022.

Suggested Action:

Attachments:

[BOA 05.17.2022 Minutes - Pending Approval](#)



**PARK CITY MUNICIPAL CORPORATION
BOARD OF ADJUSTMENT
MINUTES OF MAY 17, 2022**

BOARD MEMBERS IN ATTENDANCE: Ruthie Gezelius-Chair, Stefanie Wilson, Mary Wintzer (via Zoom)

STAFF: Gretchen Milliken, Planning Director; Rebecca Ward, Assistant Planning Director; Mark Harrington, Senior City Attorney; Jessica Nelson

1. ROLL CALL

Chair Ruthie Gezelius called the meeting to order at 5:00 p.m. and noted that three Board Members were present, which constituted a quorum. She noted that in addition to herself, Stefanie Wilson was present in person and Mary Wintzer appeared via Zoom.

2. MINUTES APPROVAL

A. Consideration to Approve the Board of Adjustment Meeting Minutes from March 1, 2022.

Chair Gezelius stated that she recused herself from the March 1, 2022, Board of Adjustment ("BOA") meeting, so she could not vote on these minutes. Senior City Attorney, Mark Harrington clarified that she could vote on the minutes and rely on the representations of the others that the minutes were accurate.

Board Member Wilson noted that her name was spelled incorrectly in the minutes.

Board Member Mary Wintzer noted a grammatical correction on page eight, in the third paragraph from the bottom, "Staff spent a lot of time discussing the 10-day period at the last meeting. If the Board could just revisit that discussion if desired," should read "Staff spent a lot of time discussing the 10-day period at the last meeting, however, the Board could just revisit that discussion if desired." She also mentioned the e-mail sent by Jennifer Franklin about the misspelling of Will Lange's last name

MOTION: Board Member Wilson moved to APPROVE the Board of Adjustment Meeting Minutes for March 1, 2022, as corrected. Board Member Wintzer seconded the motion.

VOTE: The motion passed with the unanimous consent of the Board.

3. PUBLIC COMMUNICATIONS

No ecomments were submitted and no hands were raised on Zoom.

4. STAFF AND BOARD COMMUNICATIONS AND DISCLOSURES

Chair Gezelius sought jurisdictional clarification regarding the item on this meeting's Regular Agenda. Mr. Harrington noted that the Chair would like the parties to address the jurisdictional issue first as presented in the draft outline. Depending on what the Board decides they would then proceed in the same order for the substantive portion of the Appeal.

Board Member Wintzer stated that she understood Mr. Harrington's explanation and was ready to move forward.

5. REGULAR AGENDA

A. 741 Rossie Hill -- Appeal of Historic District Design Review Approval -- The Board of Adjustment Will Review the Appeal of the Historic District Design Review Approval for an Addition to the Landmark Historic Structure. PL-22-05235.

Matt Hutchinson, attorney for the applicant, Lilac Hill East Development, began by addressing the timing of the appeal. He referenced the letter he sent to the Board, which was included in the Packet as Exhibit J. He directed the Board to Section 15-1-18(E) of the Land Management Code ("LMC"), which sets forth a deadline of ten (10) days to file appeals. He proffered that the question for the Board was whether the exception stated in this section of the LMC applied to an appeal filed by a party other than the applicant of a Historic Guidelines decision.

Mr. Hutchinson stated that in this case, there was a decision made by Staff as to whether the Historic Guidelines were interpreted correctly. He added that Section 15-1-18(E) also states that the 10-day period does not apply to an appeal from a decision by the historic preservation authority, which is a decision by Staff regarding the Design Guidelines for Historic Districts and Historic Sites, or a decision by the Historic Preservation Board regarding a land use application. He stated that the applicant agreed that the present item was that type of appeal.

He then directed the Board to the language that states "the applicant may appeal the decision with thirty (30) days after the day on which the historic preservation authority issues a written decision." He acknowledged that Staff did not agree with his interpretation that the 30-day period was provided for the benefit of applicants whose applications were denied. Mr. Hutchinson proffered that the rationale for this extra time could be found in the fact that people whose applications have been denied need extra

time to get their act together. Conversely, a party who would merely restate their previously stated objections would not need that extra 30 days.

Mr. Hutchinson argued that it made sense to read this provision as a 30-day exception only available for applicants whose applications were denied. He commented that it was either a typo and meant to refer to “appellant,” or the drafters of this language meant this to refer to the applicant. He suggested that the appellant in this instance is not the applicant and the use of those terms throughout the Code is consistent. On behalf of the applicant, he respectfully submitted that this appeal be denied on the basis of being untimely.

Polly Samuels McLean was present representing the appellants who are the neighbors that face the home directly to the left. It was clarified that these neighbors were to the east. With regard to standing, Ms. McLean agreed with Staff’s analysis of this issue. She noted that the Code Section provides that all appeals must be made within 10 days except for an appeal from a decision by the historic preservation authority. This would include a decision by Staff regarding the Design Guidelines, which is what is at issue here. She felt the reference to “the applicant” was likely a typo, but argued that in any case, there would be no means for anyone but the applicant to appeal. Moreover, she echoed the conclusion of Staff that there is a Notice Matrix in Section 15-1-21 that also indicates a 30-day period after which the Planning Department’s decision might be appealed. Ms. McLean relied on the Code and the noticing provisions and based thereon argued that the appellant timely filed the appeal. She noted that they filed their appeal before the 30th day.

Assistant Planning Director, Rebecca Ward, provided a brief overview of the Code provisions cited in the Staff Report that bear on the issue of timeliness. She referenced LMC Section 15-1-18(E) and stated that the applicant may, within 30 days, appeal a Staff decision regarding the Design Guidelines for Historic Districts and Historic Sites. She referenced Mr. Hutchinson’s argument and noted that the issue came down to what was meant by “applicant,” and whether the Code defined that as the applicant for the project or the applicant who was appealing the decision.

Assistant Director Ward pointed to the Notice Matrix found in Section 15-1-21, which provides that for all of the Historic District applications, the Planning Department is required to send numerous notices. She explained that a Public Notice goes out when the public hearing is first scheduled. Another notice goes out two weeks before Staff takes final action on a Historic District Design Application. She also mentioned that on the day an application is approved, Staff sends out a third notice notifying the neighbors that there is a 30-day appeal period for the Historic District Design Review. Assistant Director Ward stated that based on the Code and the lower case “applicant” in the Timing section, Staff found that the 30-day appeal period applied in this instance.

Mr. Harrington noted that Board Member Wintzer requested a legal determination but explained that he was not the one to make that decision; rather, the decision was to be

made by the Board. He stated his belief that the Code does not contain a typo and explained that this edit to the Code was made in 2017 as a result of changes to State legislation. Staff simply inserted the same language from House Bill 30 into the Code using the small letter “applicant.”

Mr. Harrington stated that the Board needs to decide whether that distinction referenced by Staff was the correct interpretation, or if Mr. Hutchinson’s argument that the distinction between “appellant” and “applicant” was material in establishing different deadlines.

Chair Gezelius clarified her understanding that the option for the Board was which interpretation to accept. Mr. Harrington agreed and added that the Board could determine that “applicant” meant owner/applicant or meant the applicant for the appeal.

Board Member Wintzer stated had an opinion but was befuddled like everyone else on this. She asked whether the purpose of HB-30 was to provide 30 days to the broad interpretation of “applicant.” Mr. Harrington could only speak to the exact language and read Utah Code Section 10-9(A)-74, Time to Appeal: “The municipality shall enact an ordinance establishing a reasonable time of not less than 10 days to appeal to an appeal authority a written decision issued by a land use authority.”

Subsection 2 was read as follows: “In the absence of an ordinance establishing a reasonable time to appeal, an adversely affected party shall have ten calendar days to appeal to an appeal authority a written decision issued by a land use authority.” He explained that this was a “catch-all” provision and noted that this is where Ms. McLean was incorrect in her interpretation. He argued that regardless of the interpretation, any adversely affected party is defined by State Law and has the right to appeal under the 10-day period. He then referenced Subsection 3 to the Utah Code that mirrors the language in the LMC: “Notwithstanding Sections 1 and 2, for an appeal from a decision of a historic preservation authority regarding a land use application, the applicant may appeal a decision within 30 days after the day on which the historic preservation authority issues a written decision.”

Chair Gezelius noted that on pages 24 – 26, Staff recommended hearing the appeal.

Board Member Wintzer stated that based on what was read by Mr. Harrington, and the argument of Mr. Hutchinson, she tended to believe that the appellant did not have a right to the extended period and this language would not apply to the appellant. She opined that the appellant should have been held to the 10-day period.

Board Member Wilson initially agreed with the applicant because throughout the Code the term “appellant” is used consistently and the use of the term “applicant” is isolated to that one paragraph. However, she observed that the Notice Matrix seemed clear that the intent of the City was to allow 30 days for a public appeal. She expressed her opinion that the appeal was timely.

Chair Gezelius concurred with Board Member Wilson's analysis and added that historically, they had always tried to hear appeals and resolve them as factually as possible. She noted that 10 days seemed to be a very short time, whereas 30 days seemed far more standard. She would agree to hear the appeal.

MOTION: Board Member Wilson moved to hear the appeal, as presented. Board Member Wintzer seconded the motion.

VOTE: The motion passed with the unanimous consent of the Board.

Chair Gezelius reported that the Board would now consider the substance of the appeal. Mr. Harrington introduced the appeal. He explained that the BOA is required to review factual matters *de novo*, meaning anew. He noted that they do not have to give deference to Staff and should determine the correctness of the decision of the land use authority on the administrative approval of the Historic Design. The land use authority, in this case, is the Planning Director.

In terms of scope of review, he explained that the BOA is limited to only those issues raised on appeal unless they vote to expand the scope of review. He added that the appellant had the burden of proving that an error was made and the BOA should determine the correctness of the Planning Department's interpretation and application of the plain meaning of the land use regulations. He added that land use regulations should be interpreted and applied to favor a land use application unless the land use regulation plainly restricts the land use application. He reported that this standard came from State Code as it applies to Historic decisions.

Mr. Harrington stated that if any Board Member had any *ex parte* communications regarding this matter, the substance of those communications should be disclosed during this hearing. He explained that *ex parte* communications would include discussions outside of this hearing with neighbors, the applicant, or the appellant, or obtaining opinions from any third party. Because this appeal was to be considered *de novo*, the Board may receive new evidence as long as it relates to the issues raised by the appeal. He commented that public comment should not address the pros and cons of historic preservation generally, or this applicant; rather, it should only address the issues raised in the appeal.

Chair Gezelius asked if any Board Members had any disclosures of *ex parte* communications. Board Members Wintzer and Wilson both declared that they had no *ex-parte* communications to disclose. Chair Gezelius also declared that she had no *ex-parte* communications to disclose.

Assistant Director Ward explained that this appeal was from the Historic District Design Review ("HDDR") application for 741 Rossie Hill Drive. She presented a photograph of the property taken from the Historic Sites Inventory. The applicant sought a transitional

element that was over 8 feet. The appellant submitted that this was a large addition, and this transitional element should be extended 36 inches. She introduced the parties to the appeal. Ms. McLean represented the appellants Mark Norris and Joe Peterchak. Jonathan DeGray, AIA appeared on behalf of the applicant, Lilac Hill East, which was represented by its legal counsel, Mr. Hutchinson.

Assistant Director Ward explained that 741 Rossie Hill Drive is located in an area originally designated as Residential-Medium. She noted that there was the potential for up to 24 units on the property when in 2017 the City Council re-zoned this area to Historic Residential-Low Density that decreased the density to eight units.

In 2020, the density was further decreased when the City Council adopted Ordinance 2020-02 which approved the Lilac Hill East Subdivision. The Subdivision created five Single-Family lots. As part of the Subdivision process, a private drive was created to access 741 Rossie Hill from the rear of the property, and as a result, the address was changed from 660 Rossie Hill Drive to 741 Rossie Hill Drive. She reported that on May 5, 2021, the Historic Preservation Board ("HPB") reviewed and approved the Material Deconstruction of a portion of the rear façade to accommodate the addition. The HPB also approved the lifting of the structure for a new foundation. On June 22, 2021, the Planning Department approved a Historic District Design Review for the rehabilitation of the structure.

Assistant Director Ward stated that after approval, the applicant and Staff were made aware of more restrictive setbacks, as outlined in Ordinance 2020-02. The applicant, therefore, submitted a modification to comply with these more restrictive setbacks. The Design Review Team reviewed this project. After approval on April 7, 2022, the appellant appealed the decision and argued that the addition was "large" and the transitional element must add 36 inches in length. Staff found that the eight-foot and 2 ½ inch long transitional element complied with the LMC, as approved. Staff also found that the transitional element resulted in an addition that was overall lower in height and was compatible with the site. Because the BOA determined that this appeal was timely, the substantive question for the BOA was whether the addition is a "large" addition. She reiterated that the appellant argued that an additional 36 inches would be required in the length of the transitional element.

Staff claimed that the Historic District Design Review, as approved, complied with the requirements of the Code, and the transitional element resulted in an addition that would be subordinate to the historic structure. She commented that if 36 inches were required for the transitional element, it could result in increased height for the addition that would not be compatible.

Assistant Director Ward proffered that the appellant misconstrued the square footage of the addition when they argued that the addition is 2,316 square feet, more than four times as big as the historic structure. Appellant also argued that the massing of the addition would include the new main and upper levels that total 1,054 square feet and

was almost double the size of the historic structure's square footage. She commented that the appellant included the basement addition in their calculation, as well as the transitional element that is lower in height than the Historic Structure.

Assistant Director Ward also referenced the appellant's argument that Staff made up a novel and non-Code-based justification that the addition was not "large" by using the definition of Gross Residential Floor Area. She stated that the LMC provides that Gross Floor Area is a calculation made in Master Planned Developments ("MPD"), and most often used in the Empire Pass MPD, and does not appear in the Residential Historic Districts.

She referred to the Staff Report that outlined the Gross Residential Floor Area that includes a reference to the Historic Districts within the definition and provides a baseline. While a "large" addition is not defined by the Code, the definition of Gross Residential Floor Area provides context for looking at the addition, excluding basement square footage. She reported that for this property, 1,262.5 square feet was submerged as a basement and not visible. She added that the eight-foot and 2.5-inch transitional element was another 130 square feet that would be lower than the historic structure and not visible from the right-of-way.

Assistant Director Ward explained that the first-floor addition was 307 square feet of residential living area that would be viewable from the public right-of-way, along with the upper-level addition of approximately 461 square feet. She stated that the garage located at the rear of the structure was 170 square feet. She noted that when an HDDR application is received, Staff is required to first look at the requirements of the Zoning District, and 741 Rossie Hill Drive was re-zoned to Historic Residential-Low Density. Assistant Director Ward stated that the Zoning District establishes what could be constructed on the lot.

Additionally, the Design Guidelines for Historic Districts and Sites help shape the future design to be compatible with the historic structure. She argued that in this case, the applicant designed an addition that was reduced in size from what would otherwise be allowed on the site. Also, the addition would maintain compatibility with the historic structure in materials, features, size, scale, proportion, and massing. She commented that requiring an additional 36 inches on the transitional element length could result in a taller, less compatible addition.

Assistant Director Ward reported that the applicant designed an addition that reduced the footprint by nearly 700 square feet below what would otherwise be allowed for this site. The lot totals 5,253 square feet, and the maximum building footprint is 1,955 square feet. She noted that the proposed building footprint was 692.5 square feet less than what was otherwise allowed. She explained that the addition also met the more restrictive setbacks that are based on lot depth and width. She commented that 741 Rossie Hill Drive was an unusual lot because its depth and width were not consistent across the lot. Certain provisions in the Code establish the Planning Director's

discretion to determine setbacks for unusual lots. For this lot, the side setbacks could have been as small as three feet for the addition. Ordinance 2020-02 requires 18 feet for side setbacks, with a minimum of at least five feet. As approved by the HDDR, this project complied with the more restrictive setbacks.

Assistant Director Ward next addressed the appellant's argument that the ridgeline of the new addition would be 11'8" higher than the ridgeline of the historic home and would loom above it. She argued that the applicant designed an addition that is below allowable building height. Within this Zoning District, the addition could be up to 27 feet from the existing grade; whereas, the addition designed by the applicant only reached 18 – 20 feet above the existing grade.

With regard to the appellant's argument that the addition "looms over" the existing structure, this argument does not consider that the applicant reduced the addition below the allowable building height by as much as 9 feet. Additionally, the 8' and 2.5" transitional element between the historic structure and the addition is lower in height and not visible from the right-of-way.

Assistant Director Ward stated that in addition to the Zoning District requirements, the Design Guidelines for Historic Residential Sites establish regulations that outline size, scale, and proportion and massing for compatible additions through the lens of what is possible in the Historic Residential-Low Density Zoning District regulations. The analysis for compatibility for additions is established through compliance with the Design Guidelines outlined in the LMC Section 15-13-2. She read that Section as follows: "New construction, such as new additions, exterior alterations, repairs, upgrades, etc., should not destroy historic materials, features, and spatial relationships that characterize the historic site or historic building. New construction should be differentiated from the historic structure while also maintaining compatibility with the historic structure in materials, features, size, scale, and proportion and massing, to protect the integrity of the historic structure, the historic site, and its environment." She argued that the addition complied with the requirements established in this Section in that it is located on a tertiary façade, and the HPB approved material deconstruction on May 5, 2021. In addition, the transitional element is set back 4 feet from both corners of the historic structure.

Assistant Director Ward stated that the Design Review Team, which included the Planning Director, Historic Preservation consultant, Building Department, and Planning, found that the addition was subordinate to the historic structure when viewed from Rossie Hill Drive, yet complemented the visual and physical qualities of the historic structure without being an exact copy. The Design Review Team also found that the architecture was a contemporary interpretation of the historic structure and compatible in mass, scale, fenestration patterns, and design details, and the variations in the façade setbacks break up the mass.

She next addressed the appellant's argument that this was a "large" addition, and that "large" additions should be visually separated from historic buildings when viewed from the public right-of-way. She referenced the Code that states "Where the height of a new addition, site topography (an uphill addition), or both, the addition shall be set away from the historic structure by a minimum of $\frac{1}{2}$ the length of the least-wide historic elevation adjacent to the historic elevation to which the transitional element is attached."

Assistant Director Ward reported that Staff found the addition was compliant with requirements established in Section 15-3-2, which require that on a rear addition the width of the transitional element not exceed $\frac{2}{3}$ the width of the elevation to which the transitional element is connected. Here, she noted that the rear elevation was 24 feet and the transitional element was 16 feet in width and $\frac{2}{3}$ the width of the elevation to which the transitional element is connected. She added that Section 15-13-2 also states that the depth of the transitional element, or the distance between the affected historic elevation and the addition, shall be a minimum of $\frac{1}{3}$ the length of the least wide historic elevation adjacent to the impacted historic elevation. She submitted that in this application, the least wide historic elevation adjacent was 22' and 3.5" and the transitional element was 8' and 2.5" deep.

She stated that LMC Section 15-1-18(G) states that the BOA shall determine the correctness of the Planning Department's interpretation and application of the plain meaning of the land use regulations. The BOA must also interpret and apply a land use regulation to favor a land use application unless the land use regulation plainly restricts the land use application.

Assistant Director Ward noted that the Planning Director made the following determinations:

- The historic form was positioned further back on the site than a typical historic home;
- There is a 40-foot setback from Rossie Hill Drive to the front façade of the historic structure;
- As viewed from Rossie Hill Drive, the current design would provide visual separation between the Historic form and the addition;
- There would be no perceivable improvement of this separation as viewed from Rossie Hill Drive if the separation were increased by three feet;
- The current design was smaller in footprint and in height than the originally approved addition for this site;
- The proposed addition was not out of proportion to the historic structure, nor does the site topography indicate mitigation of any visual impacts on a street-level viewer of the addition; and
- The site topography slopes uphill from the street at approximately 20%, and the vertical distance between the historic home finish floor and the addition finish floor at the rear of the building is 3'-9".

She submitted that Staff found the addition was not a “large” addition and the applicant designed an addition that was reduced in size to be compatible with the historic structure. The design is 692.5 square feet less than what is allowed for the building footprint. Assistant Director Ward added that the addition met all setbacks that were more restrictive than otherwise allowed and would be below the allowable building height. Finally, the addition complied with the Design Guidelines for residential sites.

She offered that the approved design achieved compatibility and was below the allowable height, and the transitional element provided the separation as required by Code. She submitted that requiring an additional 36 inches in transitional element length would result in an addition with increased height and future compatibility questions.

Staff recommended that the BOA open a public hearing, and consider denying the appeal.

Board Member Wilson asked if the gross residential floor area was consistently used as one of the measures to determine if an addition would be considered “large.” Assistant Director Ward explained that as part of this HDDR and other similar addition projects, gross residential floor area offers a measurement by which to compare. She was not aware of an HDDR that incorporated the gross residential floor area in the definition of what is a “large” addition.

Chair Gezelius added that setbacks and the total area would be considered. Assistant Director Ward expressed that for all HDDRs the underlying zoning regulations are reviewed at the outset to determine the regulations applicable for that site. The Historic District Design Guidelines are thereafter consulted. Chair Gezelius noted that there was no template for uniformity for the size of lots or homes in the Historic District. Assistant Director Ward agreed and added that it is a lot-by-lot, site-by-site evaluation of what would be most compatible for that structure.

Board Member Wilson stated that she went by the property to look at the work being done, and noted that there were several other historical structures next door that also had rear additions. She questioned whether those neighboring structures were similar as far as the transitional area between the historic structure and the addition.

Assistant Director Ward explained that all three historic structures, which would include the subject project, 729 Rossie Hill, and 755 Rossie Hill, went through review at the same time, and went through the HPB at the same time. The original HDDR was approved for all projects on June 22, 2021. She stated that the difference between 741 Rossie Hill and the other two, and the reason it was appealed, was that it had the more restrictive setbacks. The applicant for 741 Rossie Hill applied to modify the plans to meet the more restrictive setbacks. She reiterated that all three properties went through the HDDR process.

In response to a question from Board Member Wilson, Assistant Director Ward confirmed that the other two properties were not determined to involve “large” additions. She added that there are distinctions in the Code that depend on whether there was an addition added that was non-historic, but was maintained; in that situation, there were changes to what is required for the transitional element. She reiterated that each one is site-specific.

In response to a question from Board Member Wintzer regarding the applicant’s requested modification due to more restrictive setbacks, Assistant Director Ward explained that the original HDDR application that was approved on June 22, 2021, did not meet the more restrictive setbacks. As soon as it was learned that more restrictive setbacks applied to that property, the applicant modified their proposal to meet those additional requirements of 18 feet for the side setbacks. The modification was submitted to bring the applicant’s proposal into compliance with the more restrictive setbacks.

Board Member Wintzer understood that the applicant did not apply for an exception to the new requirements. Assistant Director Ward stated that the setbacks were established as Findings of Fact in the Ordinance approving the Subdivision, and an exception would require an amendment by City Council.

Chair Gezelius invited the appellant to present the appeal.

Ms. McLean thanked the BOA, Staff, and the developer for the time spent on this matter. She commended the thoroughness of the Staff Report and expressed the utmost respect for Staff. She felt they were seeing things in a slightly different way, and based on the Code, there is no choice but to require the additional transitional area. She displayed a photograph of the house, and although she did not research it, understood that this was the red-light district of Park City. Mr. Harrington interjected that the prior owners requested that these homes not be referred to in that way and objected to that characterization on the record.

Ms. McLean stated that 741 Rossie Hill is a beautiful gem of a historic house. It has been designated a Landmark Historic home, which is the highest designation given to historic homes. She added that it was a miner’s home that they were protected through the Code, and that was put on the National Register of Historic Places in 1984. The home was built circa 1890 and was known as the Benedictus Carling House. She expressed that Park City has done an amazing job preserving these historic homes, and it took years to get to a point where the HDDR matched the priorities of the town.

Ms. McLean stated that the current Code that governs the HDDR was worked on for over five years and reviewed intensely by the HPB, the Planning Commission, and City Council. One of the goals of the revisions passed in 2019 was to have greater transparency in developing compatible designs. She proffered that according to a 2016 Staff Report, the point in revising the Design Guidelines was to require more details,

transparency, and clarity on how additions to historic structures should be treated, specifically transition element clarifications, compatibly additions, and other elements.

She referenced the Minutes from that meeting, which reflected discussions on ways to make additions separate from the historic house. She noted that clarification was added to the existing guidelines as well as how to quantify by design the scale of an addition and its transitional element.

Ms. McLean referenced LMC Section 15-13-2(B)(4)(c)(5) [which she would reference as “(c)(5)”] and noted that there were many steps to consider when evaluating these additions to the City’s most valuable historic homes. Ms. McLean read this Code Section as follows:

“Large additions shall be visually separated from historic buildings when viewed from the public right of way. Where the height of a new addition, site topography (e.g. an uphill addition), or both, the addition shall be set away from the historic structure by a minimum of one-half (1/2) the length of the least-wide historic elevation adjacent to the historic elevation to which the transitional element is attached.”

She offered that this language was very precise and provided a mandatory requirement without any exceptions that would allow the Planning Director to be subjective. She stressed that this is a beautiful home, and Jonathan DeGray, AIA is a fantastic architect who has designed a lot of buildings in town. She was not trying to take away from the home’s appearance, but the fact remains that the Code requires that where the height of a new addition, site topography (e.g. an uphill addition), or both, the addition shall be set away from the historic structure by a minimum of ½ the length.

Ms. McLean stated that this is where they believe Staff erred in their interpretation. She stressed that they focused on the fact that the addition was uphill based on height and topography and stated that this issue is black and white. Much of the other discussion does not address the language of the Code.

Ms. McLean explained that the appellant’s position involved two arguments for the BOA’s consideration. The most straightforward issue is whether this was an uphill addition and whether the height of the new addition was above that of the historic home. She commented that the appellant was not arguing that the applicant could not put additional height on the home; rather, with the uphill addition, there would need to be separation further from the house. She referenced the plans and noted that the addition would be 11’-8” higher than the historic home, which is almost a full story above the ridgeline. In addition, the site topography slopes uphill from the street at a slope of approximately 20%. She argued that based on these facts, the transitional element must be increased.

In addition, Ms. McLean argued that the addition fell under the “large” addition definition. She submitted that in determining whether an addition is “large,” the gross floor area would not be determinative. The Code mentions gross floor area in the exception for garages, but that term is not mentioned anywhere else in the Code. She submitted that the evaluation of whether an addition is “large” was based on LMC Section 15-13-2(A)(9) which provides that “new construction shall be differentiated from the historic structure while also maintaining compatibility with the historic structures in materials, features, size, scale, and proportion, and massing to protect the integrity of the historic structure, the historic site, and its environment.”

Ms. McLean stated that this Landmark home is 540 square feet in size. She acknowledged that she was using the plans to show what the addition included; but based on her new calculation, the addition is 590 square feet and is comprised of two stories. By removing the transition area, that totals 131 square feet. She submitted that where the transition area protrudes out more, it should be set further back to be less visible. Doing so would push the addition back so it would have less impact on the Landmark home. She added that the west elevation made more sense in terms of the transitional element because that is where it punches out more with the addition. This would push the addition back 3 feet, which is what was decided by the City Council with input from the Planning Commission and HPB.

She revisited the overhaul of the Design Guidelines and argued that the idea was to quantify it so that there would not be the ability to disregard sections simply because other elements were less than the allowable numbers. Ms. McLean urged that Staff was mistaken in focusing on the “large” addition issue rather than the “uphill” issue. While the appellant disagreed with Staff’s assessment of the “large” addition issue, the BOA would not even have to get there because of the clear mandate of the language regarding “uphill” additions. She suggested that there appeared to be a word missing from the section, but submitted that the entire section could not be disregarded simply because a word was missing.

She acknowledged that the site is challenging but noted that it was the developer who submitted the Subdivision Plat that created this lot. When the Subdivision was done in 2020, the developer never contested the setbacks, which she felt were consistent with the setbacks of the Historic Residential-Low Density Zone. She presented a graphic showing the side setbacks of 18 feet for lots in this zone.

Ms. McLean emphasized that there was no question regarding the Subdivision Ordinance. The fact that the footprint is less might be a function of the site, and the idea was to not overwhelm the Landmark building because it should be preserved while at the same time allowing the owners to make it a bigger, more livable home.

The appellant appreciated that the developer and Staff accepted a new submittal to correct the footprint because that was the right thing to do. However, pursuant to this section of the Code, there was no exception for the interpretation proffered by Staff.

Staff completely ignored any analysis related to the height. Appellant also disagreed with Staff's "large" addition analysis but reiterated that the Board did not even have to address that because if it was determined to be an "uphill addition," then the Code referenced would apply. She emphasized that the applicant would still be able to build what they are entitled to pursuant to the Code and stated that the appellant was requesting that the addition be pushed back three feet so that it would be more separated.

Ms. McLean asked the Board to not give deference to Staff and make its own decision finding that this is an uphill lot and based on either the height of the new addition, the site topography, or both, make the additional finding that the addition is pushed back three feet. She added that the appellant also contended that the addition is "large," which triggers the Code section referenced. Because the addition does not meet the Code requirements, it was not compatible. She emphasized that this section of the Code is not discretionary.

Board Member Wilson questioned why the appellant only objected to this unit and asked Ms. McLean to clarify whether the offense to this unit as compared to the other two in the same Subdivision is that it is uphill. Ms. McLean responded that when they initially filed the appeal, they claimed that the other two homes did not meet the transitional element requirement. Appellant was initially focused on the home nearest to theirs, and all along had been advising Staff that the other two homes were also not in compliance. She claimed that Staff never responded. She stated that they asked to meet with Staff before this hearing, but that did not happen and they are scheduled to meet next week.

Ms. McLean averred that the other two homes also do not meet the Code, but because they were approved in June 2021, they missed the appeal period to contest that decision.

Mr. Harrington clarified that Staff did respond in that they found that the homes complied, and the appeal period passed.

Board Member Wilson asked if the issue was just that the appellant feels that it would look better to move the addition back three feet. She understood that the appellant might feel that the structure would be looming, but questioned how much of a difference three feet would make.

Ms. McLean submitted that the difference was that this is what the Code required, not a balancing of what would be best. She offered that the appellant thought that moving it back three feet would make it a better addition. The purpose of the Code was to push it back so that it is not looming as much on the historic home. She referenced the intent of the Code, which is to protect the integrity of the historic structure, historic site, and its environment. By pushing it back, that would be achieved. She argued further that if

Park City does not think that the addition should be set back by half, the Code should be changed.

Mr. Hutchinson, attorney for Lilac East Development, argued that it could be very easy to get into the weeds of a particular application and the length of a particular transitional element. He felt it important, however, that everyone appreciate what a difficult project these homes were. The homes were completely dilapidated and an eyesore on a main artery in and out of Deer Valley. He stated that, for good reason, there are already so many restrictions on what can be done with these historic structures because the town is a museum. Everyone values the approach that Staff takes on these applications, and he stressed that it is extremely hard to meet all the requirements.

Mr. Hutchinson referenced Assistant Director Ward's presentation where she pointed out that this project has a number of different overlays before you even get to the Historic Guidelines. It is subject to a relatively new zone, which the prior owners did not oppose. He noted that the current owners were under contract to buy this home when the property was re-zoned, and they did not oppose it either. He added that when the time came to subdivide these lots in preparation for development, there were eight units of density available to the developer, who is a local. Instead, the developer voluntarily decided that a five-lot subdivision made more sense and would be more compatible with the forms.

By the time Mr. DeGray was hired to draw the additions for the three historic dwellings, many years of work and expense had already been undertaken. He emphasized that when the appellants discovered that 741 Rossie Hill did not comply with the 18-foot gross setback requirement, it was the applicant who disclosed that finding to the City. He explained that was done in the context of a demand by appellants that the applicant make changes to the drawings and pay the appellant to not disclose this zoning violation to the City.

Mr. Hutchinson argued that by opening up the application to correct this issue, they unwittingly set a new clock for the appellant to stop this project. He offered that while the BOA has a difficult job, this issue should be easy since the goal of the Historic Guidelines is not to apply a mechanical formulaic approach as urged by appellants.

He referenced Ms. McLean's calculations that do not comport with the way the City measures gross square footage or floor area in other contexts. He cited LMC Section 15-13-1 which states: "The Design Guidelines are not intended to be used as a technical manual for rehabilitating a building or structure, nor are they an instruction booklet for completing the Historic Site Review application. Instead, they provide applicants, staff, and the Historic Preservation Board with a foundation for making decisions and a framework for ensuring consistent procedures and fair deliberations."

Mr. Hutchinson stressed that this appeal is about "fair deliberations," and if they want to talk about fairness, the whole context of the applicant must be taken into account. He

emphasized that the City approved the prior application, and when the applicant learned that it was not compliant with the setbacks, it was the applicant who brought that fact to the Planning Director's attention and submitted, at its expense, a new application. In doing so, the applicant opened themselves up to a new appeal. He stated that the applicant was notified of the setback violation in November 2021, and they have lost all of that time to get to this point.

Mr. Hutchinson noted that Board Member Wilson made an excellent point when she asked how a three-foot increase in the transitional element for the addition going to mitigate any of the issues being complained of. He added that this addition would be 50 feet from the street and adding another three feet to the addition, which could result in a taller and bigger dimension, would not make much of a difference. He stressed that this application for the addition was below the height maximum for the zone, complied with the setbacks on a difficult site, and would transform this dilapidated structure into something the City could be proud of.

Mr. Hutchinson addressed the language of the Code and noted that some of it is imperfect. He pointed out that the Municipal Code provides that land use applications are not to be interpreted in a manner that is arbitrary and capricious, or that unfairly prejudices an applicant. He urged the Board to keep the following provision in mind as they deliberate Section 15-13-2(B)(4)(c)(5): "If a land use regulation does not plainly restrict a land use application, the Historic Preservation Authority shall interpret and apply the land use regulation to favor the land use application." He submitted that a "tie" should go to the runner; here, if there is an ambiguous provision in the Code that does not plainly restrict a particular application, the applicant should be entitled to a determination in their favor.

He addressed Section 15-13-2(B)(4)(c)(5) and argued that the first sentence of this provision makes clear that the point of view for deciding whether a particular addition is "large" is from the right-of-way. This is consistent throughout the Historic Code since the visitors to the City's "museum" are not viewing these historic gems from the property itself, or even from a neighboring window.

Mr. Hutchinson offered that the reason for evaluating it from the point of view of the street is that that is where the City's visitors come to view these historic buildings. The question of whether this addition is compatible, too large, or "looms," is from the perspective of someone standing on the street. The 40-foot setback, which is not typical for a front yard setback in Park City, sets out the historic structure. He added that developers are not allowed to move these homes. In this instance, Mr. Hutchinson argued that the determination of whether the addition is "large" is clearly to be evaluated from the vantage point of someone standing in the right-of-way.

Mr. Hutchinson stated that, secondly, the clause in the second part of this Section, on which the appellant has relied, is basically nonsense. He read the first part of that sentence as follows: "Where the height of a new addition, site topography (e.g. uphill

addition), or both, the addition shall be set away from the historic structure by a minimum of $\frac{1}{2}$ the length..." He asked "the height of the new addition what?" and offered a myriad of possibilities that could be added but that are not specified in the language.

He urged the Board that if they agreed that this clause was meaningless, or at least vague, the Board had to find in favor of the applicant based on Utah Code Section 10-9(A)(527)(3) which provides that if a land use regulation does not plainly restrict a land use application, the Historic Preservation Authority shall interpret and apply the land use regulation to favor the land use application.

Mr. Hutchinson stated that this provision does not plainly restrict or establish that 741 Rossie Hill's proposed addition is "large" within the meaning of this rule. He added that if there is any question, then the appeal should be denied. Notwithstanding the fact that the Board has the ability to revisit factual findings made by Staff, it is the appellant's burden to establish that Staff erred in finding that this was not a "large" addition. He argued that the Board must look at whether the language "plainly restricts" the land use and disagreed with the appellant that the wording "e.g. uphill addition" was in any way illuminating. He submitted that if the Board denied the appeal, there would be a historic gem placed on a foundation, refurbished, and beautified within one year from now. He asked the Board to deny the appeal and allow this project to move forward.

Mr. DeGray addressed the compatibility issue and explained that this has been a long process that involved much back and forth with Staff regarding the re-design to ensure that the addition would be compatible with the historic form. He offered that everyone acted with the best of intentions throughout the process to arrive at the best possible product. He commented that the three lots are all very distinctive and it would be difficult to compare the three because they each had subtle nuances that needed to be addressed. The setback from the street being over 40 feet was unique and something that aids in how the building and the addition would be perceived from the public right-of-way. He stressed that this point of view that must be considered in evaluating the compatibility of the addition.

Mr. DeGray echoed Staff's presentation that the footprint and height are both well under what is allowed by the Code. The separation that has been provided is adequate to give proper separation to the approved design. Extending that separation three additional feet would not provide any meaningful change when viewed from the street.

Assistant Director Ward addressed the appellant's claim that Staff was working with the applicant to get around the Code requirements and that the decision was pre-determined. She stated that a significant part of what Planning does is to try and preserve these jewels. One of the core values in the General Plan is historic preservation, and when the HDDRs are submitted for review, Staff spends a great deal of time working through iterations to come to something that would be compatible with the historic structure and also compliant with the Code.

She referenced the appellant's argument that in 2019 the Historic District Design Guidelines were updated to quantify requirements, specifically for transitional elements. She agreed and stated that the Code cited by the appellant was specific to "large" additions. "Large" additions are not quantified; however, what is quantified in (c)(5) is that "large additions shall be visually separated from the historic building when viewed from the public right of way." Assistant Director Ward offered that the second portion of that section illustrated this requirement but did not quantify a "large" addition.

Assistant Director Ward explained that in HDDR approvals, they recognized that additions must be differentiated from the historic structure, but also needed to "maintain compatibility with the historic structure in materials, features, size, scale, and proportion, and massing to protect the integrity of the historic structure, the historic site, and its environment." Staff looked to the actual quantified guidelines to help achieve those results.

She stated that the quantified guideline was found in LMC Section 15-13-2(B)(4)(b)(4) requires that the width of the transitional element on a rear addition not exceed $\frac{2}{3}$ the width of the elevation to which the transitional element is connected. She noted that the rear elevation is 24 feet, and the transitional element is 16 feet wide, which is $\frac{2}{3}$ the width of the elevation to which the transitional element is connected. She stressed that this is quantified and complies with the Code.

LMC Section 15-13-2(B)(4)(b)(6) states that the depth of the transitional element, that is the distance between the affected historic elevation and the addition, shall be a minimum of $\frac{1}{3}$ the length of the least wide historic elevation adjacent to the impact historic elevation. She stressed that this is quantified and this project complied. The least wide historic elevation adjacent to the impacted historic elevation is 22 feet and 3 $\frac{1}{2}$ inches. The transitional element is 8 feet and 2 $\frac{1}{2}$ inches deep.

Assistant Director Ward reiterated that the consideration of compatibility involved viewing the structure from the right of way. They found that this transitional element was not a "large" addition and met the quantifiable standards in the Code. She added that Staff has worked with the appellant to try and understand the concern and what would be achieved by requiring an additional 36 inches. Based on the March 10, 2022 Minutes of the Historic District Design Review, one of the appellants stated that they did not have specific concerns, but that the lawyer simply stated it did not comply. Staff found through a thorough review of the project, the proposal would preserve the historic integrity of the structure, the Design Guidelines that were quantified in 2019 were met, and the addition complements the Historic Structure.

Chair Gezelius opened the public hearing.

Ruth Mainsma gave her address as 305 Woodside Avenue and presented five images to the Board. Chair Gezelius reminded the speaker that any public comment must be

related to issues raised in the appeal only. **Ms. Mainsma** addressed the issue of quantifiable use of the transition and the size of the addition. She found guidance in the Design Guidelines and referenced LMC 15-13-2(B)(4)(a)(3) that uses the term “visually subordinate,” which is not quantifiable. When the section speaks of a transitional element, the language always speaks in terms of footprint, which she proffered is the guidance as opposed to gross floor area. She stated that “gross floor area” was not in any description or used to provide guidance for any property addition and transitional element. With respect to the transitional element, she argued that the Code stated that a transitional element shall be required for any addition to a historic structure where the footprint of the addition is 50% or greater than the footprint of the historic structure. She averred that the footprint of the addition is the historic structure as built, and whatever is added onto it.

Ms. Mainsma calculated that the as-built historic structure was 23' x 23' or 536 square feet, and anything added to this would be considered an addition. If the addition was 50% the size of the historic structure or greater, a transitional element would be required. She argued that this is very quantifiable. She then addressed the language that states the depth of the transitional element shall be a minimum of one-third of the least side. She averred that if the addition is 50% or greater, it goes into a different category.

Ms. Mainsma then submitted that with respect to compatibility, the Code required that additions should be subordinate in scale to the primary structure. She urged that this consideration is made with regard to the footprint and noted that the Code states that the footprint of the addition should not exceed 50% of the historic structure. She argued that if the addition is 50% or more the size of the historic structure, a transitional element is required. She then added if the addition was higher than the historic structure and on a slope, those situations quantify that the depth of the transition would fall within a whole new category that the addition then be set away half the length of the least wide historic structure. She reiterated that the footprint of the historic structure is 536 square feet, which is the only calculation used in the Historic Guidelines. She included the transitional element in the calculation of the footprint of the proposed addition and calculated that it was 727.5 square feet. She argued that the addition was 135% greater than the historic structure.

Ms. Mainsma believed that if the Guidelines start at 50%, then 135% would render it a “large” addition. She noted that while it is not a huge addition, the historic house is small. Because the addition is more than 50%, then the height and site topography considerations should be applied. She referenced page 8 of the Staff Report, in which Staff concluded that the appellant misconstrued the square footage of the addition. She specifically referenced the language the appellant “fails to distinguish between the transitional element and the addition, and includes the transitional element...” She urged that this is incorrect since the transitional element is part of the addition. She further referenced language in the Staff Report, on page 8, where it states that the

transitional element should not be included in the square footage of the addition. She disagreed with that conclusion.

Ms. Mainsma next addressed the 2017 Ordinance where they changed the zoning for this area to Historic Low Density. The Findings of Fact from that meeting stated that the change in zoning was appropriate in that the zone change would meet the City Council's goal of preserving the hillside and promoting redevelopment of historic houses and is consistent with the General Plan. She referenced Finding of Fact No. 12 for the 2017 Ordinance that stated that the proposed zoning amendment directs complementary development to an existing neighborhood and protects the historic properties along Deer Valley Drive, which meets the goals of the General Plan.

With respect to side setbacks, she noted that the width of the lot defined the setbacks, but the Planning Director could not simply reassess them because it is an odd-shaped lot. She proffered that the City Council decided in 2020 to restrict the lots and impose larger side yards by changing the density and the setbacks. She opined that the City Council did this because they wanted to do everything they could to protect these houses.

Ms. Mainsma referenced page 10 of the Staff Report regarding the definition of compatibility and discussed the capitalization of that term. She argued that capitalization of a term means that you can find it in the dictionary. Compatibility is used everywhere in the General Plan and the Guidelines, as well as the definition in the Code. She stated that compatibility is a legitimate word that can be used to speak on historic guidelines because it is used throughout the General Plan. She presented a graphic showing the building pad and noted that because of the location of the historic house on the lot, there is buildable space, but it cannot be utilized because the home cannot be moved. This is a restrictive lot on many levels.

Ms. Mainsma suggested that if the building could be moved forward, there would be a lot more space to build in the back. She acknowledged that the City does not allow buildings to be moved, and added that the difficulty with this structure is that it is a very unique and uniquely restricted lot for very specific reasons. With regard to the Staff's statement that the applicant's proposal does not max out the buildable footprint, Ms. Mainsma stressed that the applicant could not do so in any event. She suggested that the applicant was not acting generously in making the addition smaller to accommodate the historic structure. She argued that the Guidelines do provide guidance on what is meant by the term "large" addition. She reiterated the provision stating that 50% or more of the historic structure needs to be accommodated with a transitional element. She stressed that at 135%, it goes to a different level that requires a deeper transition.

There being no further public comment, Chair Gezelius closed the public hearing.

Board Member Wintzer thanked those present for their input. She expressed appreciation for Ms. Mainsma's input because it made her realize and remember the large neighbor participation when this Subdivision was being created and how the Council addressed the issues. She knows many of the people who live below where she lives and were very active as this Subdivision was being created.

She stated that she listened to all the presentations, but noted that the analysis of the LMC offered by Ms. Mainsma that the increase in square footage by 135% definitely takes into the next level, which explains to her why the structure, especially the one to the right, did not sit well with her in terms of scale and mass.

Board Member Wintzer assured Staff that the Board does not pay any attention to remarks or claims that Staff was not doing their best or had other motives. She felt that Staff was sincere in what they are trying to do. She returned to the past history as offered by Ms. Mainsma that provided the understanding and interpretation that she presented to the Board. She stated that the attorneys had compelling arguments, but they were fighting for their clients, while Staff was fighting to do the best they could. Ms. Mainsma was really fighting for Old Town in this situation.

Board Member Wintzer felt that the transitional element was set up with a real purpose to it, and was inclined to support the appeal based on that.

Board Member Wilson also thanked everyone for their time and input into this appeal. She felt everyone did a great job with their arguments and highlighted Staff's work in the original report and approval. Staff specifically rationalized why the ½ rule did not apply to this property. She noted that the burden of proof is on the appellant. The main issue before the Board was whether this addition is "large." She did not find it to be too large from the street view for a variety of reasons, including the fact that it would set way back and would be smaller than what the Code would allow. She offered that the building next door was large, and this addition would be very small in comparison.

Board Member Wilson stated that in terms of the "uphill" issue and whether that would require some mitigation, the Code's use of the wording "e.g." or "for example," could mean that being uphill might be something that makes the massing too large. However, she did not think that a structure being uphill required that the rule be put into play. The applicant proposed a lower height than is required by nine feet, which she felt mitigated the uphill nature of the addition.

Board Member Wilson was inclined to deny the appeal and vote in favor of the developer.

Chair Gezelius added a point in relation to historic preservation and the overall goal of maintaining the historic structures. One method that has been affected has been allowing additions to these structures because the current standard of size, convenience, and preservation did not encourage living in these very small homes. She

also felt that some additions have better designs than others, and there are examples throughout the City of both. However, standing at street level and looking at this historic home, only a portion of the proposed addition would be visible. She added that for someone riding on a bus, only the upper level of the addition would be visible above the roof line of the restored historic home.

Chair Gezelius added that Staff did an excellent job of analyzing the lot, the application, the setbacks, and the rules and came up with what amounts to a compromise for this lot that would enable the historic home to be preserved instead of continuing to deteriorate with time and lack of use. She would support Staff's position and recommend denial of the appeal.

MOTION: Board Member Wilson moved to DENY the appeal.

Chair Gezelius asked if she could second a motion. Mr. Harrington stated that she could second the motion but pointed out that Section 15-10-11 requires a three-vote majority. Chair Gezelius asked Board Member Wintzer if she was interested in seconding the motion to deny the appeal. Board Member Wintzer asked Mr. Harrington if she could second the motion with the intent to vote "Nay." Chair Gezelius clarified that since there are only three BOA Members present, the decision must be unanimous.

Board Member Wintzer stated that with the statement that she believed that the transition should be added, she concurred with Chair Gezelius' comments about how hard it is to get people to restore historic homes. She understood the developer's dilemma in this regard. She asked if she could make that statement, then she would vote to deny the appeal.

Ms. McLean expressed her understanding that the BOA still has five members, and until tonight's hearing she was unaware that this appeal would be heard with only three members. She noted that the appellants and applicants are often asked if they want to have the appeal heard by the entire Board. Because there appeared to be a split vote, she would ask that this matter come back before the full Board so that there could be dissent and avoid the situation of a Member feeling pressured to vote a certain way just to get something done.

Mr. Harrington stated that they had been hopeful that there would have been another Member attending this hearing electronically, but connection issues arose. He stated that this request for a continuance could be made to the Chair, but offered his belief that no one was pressuring Board Member Wintzer to change her mind. The Board can see if they have a consensus position, which is the purpose of the debate and deliberation. He added that if the appellant objected to having only three Board Members at the beginning of the hearing, the objection could have been made at that time. He proffered that initially, the Chair should entertain a motion to continue, or determine if there is consensus among the three Board Members.

In response to Board Member Wintzer's question, Mr. Harrington stated that she could certainly make any qualification or statement she wished if she decided to change her mind or if she had been persuaded to vote another way. However, the decision must be based on the criteria of the Code in terms of finding an error. He added that if she continued to take a position in support of the appeal, she must delineate how Staff erred. Conversely, he noted that the other two Members outlined how there had not been an error. He stated that they could continue to discuss these issues, or entertain the appellant's motion to continue.

Chair Gezelius stated that there was a motion on the floor, and procedurally, that motion either needed to be seconded or withdrawn. Board Member Wintzer suggested withdrawing the motion to allow for more discussion.

WITHDRAWL OF MOTION: Board Member Wilson WITHDREW her motion to deny the appeal.

Chair Gezelius stated that at this point there were three options. There could be another motion to deny the appeal, a motion to approve, or a motion to continue based on the inability of the three Board Members to come to a unanimous decision.

Board Member Wintzer stated that Chair Gezelius and Board Member Wilson made good points to support their positions, and she understood that from the road people would not see the addition. However, the fact remained that Ms. Mainsma broke it down to how this house went up to the third criteria, and the 2017 Council worked hard to restrict this lot.

Board Member Wintzer noted that the developer knew that the lot was restricted and agreed to those restrictions. When the Code states that when the square footage is over 50% and is uphill then it goes into the other category of half the measurement; she could not see how they could just eradicate that by all the good and logical points regarding visibility from the street. In her mind, there needed to be a point of whether they go with the rules or lose the homes because people would not want to restore them.

She felt that if it did come to that, then the Code needed to change as suggested by Ms. McLean. She suggested continuing this matter until they have more Members present to allow for a broader discussion.

Chair Gezelius was looking for productivity and a decision and whatever direction they could take to move towards that was her goal. If there was not a unanimous decision among the current seated and present Board Members, she felt the most productive thing for the parties would be to continue the matter so that a decision could be reached.

Board Member Wilson commented that the three tiers that Ms. Mainsma raised were Ms. Mainsma's interpretation of the Code. She did not feel that the Code sets out that framework as offered by Ms. Mainsma.

Section 15-13-2 of the Code was presented again to the Board. Assistant Director Ward explained that these were the Design Guidelines for Historic Sites. She added that number 9 of the Universal Design Guidelines addressed additions. She read that additions "should not destroy historic materials, features, and spatial relationships that characterize the historic site or historic building. New construction should be differentiated from the historic structure while also maintaining compatibility with the historic structure in materials, features, size, scale, and proportion, and massing to protect the integrity of the historic structure, the historic site, and its environment."

She then directed the Board's attention to subsection (B), entitled Specific Design Guidelines, and particularly the subsection on Additions to Primary Structures. She explained that the language under Protection for Historic Structures and Sites provides general requirements.

Assistant Director Ward read subsection (i) as follows: "Additions to historic structures should be considered only when it is demonstrated that the new use of the building cannot be accommodated by solely altering interior spaces."

She proceeded to read subsection (ii) as follows: "Additions to historic structures shall be considered with caution and shall be considered only on non-character defining façades, usually tertiary and occasionally secondary façades. Additions shall not compromise the architectural character of historic structures. Additions to the primary façades of historic structures are inappropriate."

She continued by reading subsection (iii): "Additions should be visually subordinate to historic buildings when viewed from the primary public right-of-way." Subsection (iv) was read as follows: "Additions to historic structures shall not be placed so as to obscure, detract from, or modify historic roof forms."

Assistant Director Ward read Subsection (v): "Additions to historic structures shall not contribute significantly to the removal or loss of historic material." Subsection (vi) was read as follows: "Where the new addition abuts the historic building, a clear transitional element between the old and the new should be designed and constructed. Minor additions, such as bay windows or dormers do not require a transitional element."

She next read subsection (vii) as follows: "Maintain and preserve additions to structure that are significant to the era/period of restoration," and subsection (viii) "In-line additions shall be avoided."

Assistant Director Ward explained that the next Subsection was specific to Transitional Elements. She began by reading subsection (i) that In-line additions should be avoided generally are not appropriate.”

She emphasized subsection (ii): “A transitional element shall be required for any addition to a historic structure where the footprint of the addition is 50% or greater than the footprint of the historic structure. The historic structure’s footprint may include additions to the historic structure made within the historic period that have gained historic significance in their own right.” She noted that subsection (iii) states: “When an addition to a historic structure is less than 50% of the historic structure’s footprint but exceeds the height of the historic structure due to either the greater height of the addition, site topography (e.g. an uphill addition), or both, a transitional element shall be required.

Subsection (iv) provides that “On a rear addition, the width of the transitional element shall not exceed two-thirds (2/3) the width of the elevation to which the transitional element is connected. The transitional element shall be set in from the corners of the affected historic elevation by a minimum of two feet (2’).”

She skipped Subsection (v) as it did not apply to this application. Subsection (vi) provides that the depth of the transitional element shall be a minimum of one-third (1/3) the length of the least wide historic elevation adjacent to the impacted historic elevation. In addition, subsection (vii) provides that the “highest point of the transitional element shall be two feet (2’) lower than the highest ridgeline of the historic structure.”

Assistant Director Ward noted subsection (ix) as follows: “When an existing non-historic or non-contributory addition is used as a transitional element, the preceding guidelines for transitional elements shall not apply.”

She then addressed the Compatibility provisions, which she listed from the Code as follows:

- Additions shall complement the visual and physical qualities of the historic building;
- The addition shall be a contemporary interpretation of the historic structure’s architecture style;
- Additions shall be subordinate in scale to the primary historic structure. The footprint of an addition shall not exceed 50% of the footprint of the historic structure, including any additions that have achieved historic significance in their own right. If the footprint of the addition approaches or exceeds 50% of the footprint of the historic structure, the mass shall be broken into modules to reflect the mass and scale of those modules seen on the historic structure;
- Additions shall be visually subordinate;
- Large additions shall be visually separated from the historic buildings; and

- Building components and materials used shall be similar in scale and size to those found on the historic building.

She explained that for additions of less than 50%, as long as it does not exceed the height no transitional element is required. There are two additional standards for transitional elements: one for additions between 50% and “large,” which is undefined, and the second for the undefined “large” additions. She stressed that these are the three General Compatibility sections that are quantifiable and this proposal complied with these standards.

Mr. Harrington offered that the matter must either be re-opened to deliberation and comments from both sides, continue deliberation, or entertain a motion to continue. Chair Gezelius wanted to allow continued deliberations by the Board. Mr. Harrington clarified that three votes were needed to sustain the appeal or other action. The appeal could still be denied by a failure to get three votes. He suggested continued deliberations or addressing the merits of the request for a continuance.

Board Member Wilson sought clarification of whether if there were two votes to deny the appeal, the appeal would be denied with Board Member Wintzer still voting in favor of the appeal. Mr. Harrington stated that it was preferred that a majority of the Board adopt its own findings in support of the vote. They could either try and persuade the dissenting member to support the majority’s findings, or continue to deliberate to arrive at a written decision. Additionally, if the appeal fails, then the original written decision would stand and would be the basis of any appeal to the District Court.

Chair Gezelius explained that the two options were to either call for a motion on the appeal, or they could call for a motion to continue.

Board Member Wintzer asked Mr. Harrington if he agreed that it came down to an interpretation and there was not a clear reading of the Code. Mr. Harrington stated that Staff’s undisputed position was that the proposal complied with the Transitional Elements section of the Code. He stated that the Board needed to decide whether **Ms. Mainsma’s** interpretation was accurate. He added that Staff’s position was that the General Compatibility section was different and provided them the discretion to apply the Compatibility Standard in greater context to determine in helping define “large” on a site-specific basis. This would be opposed to other standards, which contain quantified measurements.

Conversely, the appellant’s argument and **Ms. Mainsma’s** interpretation, was that read together the Code clarified that “large” speaks for itself. He offered that the Board must decide whether Staff erred in the methodology used in applying the standard to the facts of this application. He added that the applicant/owner argued that there should be rules of construction that favor Staff’s interpretation if they find an ambiguity in the meaning of “large.” **Ms. Mainsma** pointed out that the progression matched a degree of footprint

and was, to her, more obvious. He offered that the Board should remember that the rules of construction that require the Board point to any error in application of the Code.

Ms. McLean emphasized that the Board was also not to provide any deference to Staff.

Chair Gezelius noted for Board Member Wintzer that they tried to avoid the “he said, she said” scenario and information was interpreted and presented by several persons and they must decide on the most credible argument. Board Member Wilson felt that Staff error would be that they ignored the Code. She pointed to the original Staff Report as part of the approval and noted that they spent paragraphs explaining why the half rule did not apply to this property. She stressed that Staff thought through these issues and made very good arguments, and the burden of proof that Staff erred was on the appellant. She did not see that the appellant met their burden.

Chair Gezelius noted that almost all of these applications were purposefully subject to interpretation since no two applications are alike. They do require discretionary judgment to get a good product within the rules they have agreed to use. She agreed that Staff carefully evaluated each one of their recommendations and that this was an acceptable application.

Board Member Wintzer appreciated these comments and suggested that they proceed with a motion to deny the appeal.

MOTION: Board Member Wintzer moved to DENY the appeal based on the following:

Findings of Fact

1. 741 Rossie Hill Drive (formerly 660 Rossie Hill Drive) is a one-story frame hall parlor Single-Family Dwelling built around 1895 during the Mature Mining Era (1894-1930).
2. 741 Rossie Hill Drive is Lot 1 of the Lilac Hill East Subdivision (Summit County Recorder Entry No. 1164826).
3. In 1984, 741 Rossie Hill Drive was listed on the National Register of Historic Places as part of the Park City Mining Boom Era Residences Thematic District.
4. 741 Rossie Hill Drive is a Landmark Historic Structure on the Park City Historic Sites Inventory.
5. On February 16, 2017, the City Council adopted Ordinance No. 2017-05 to rezone the area from Residential Medium to Historic Residential Low – Density to decrease Density from 24 to eight units.

6. On January 9, 2020, the City Council adopted Ordinance No. 2020-02, approving the Lilac Hill East Subdivision to create five Single-Family Dwelling Lots. Approval of the Lilac Hill East Subdivision changed the address for this property from 660 Rossie Hill Drive to 741 Rossie Hill Drive.
7. On February 25, 2021, the City Council adopted Ordinance No. 2021-09, extending the Lilac Hill East Subdivision approval for one year.
8. On May 5, 2021, the Historic Preservation Board approved the Material Deconstruction of a portion of the rear façade of 741 Rossie Hill Drive to accommodate an addition and rear garage, and the lifting of the Historic Structure for a new foundation.
9. On June 22, 2021, the Planning Department approved a Historic District Design Review for the rehabilitation of the Landmark Historic Structure and the addition.
10. After approval, the Applicant and staff were made aware of setbacks more restrictive than the Land Management Code outlined in Ordinance No. 2020-02 approving the Lilac Hill East Subdivision. As a result, the Applicant submitted a Modification to the Historic District Design Review to comply with the more restrictive setbacks.
11. The Design Review Team reviewed the Modification to the Historic District Design Review on January 5, 2022. The Applicant incorporated Design Review Team input into the proposed plans.
12. On March 10, 2022, the Planning Department approved the modified Historic District Design Review.
13. On April 7, 2022, the appellant appealed, arguing the addition is a “large” addition, requiring an additional 36 inches in the transitional element length.
14. The appellant timely filed an appeal.
15. The appellant has standing to appeal because they submitted public input, participated in the administrative public hearing, and they represent adjacent property owners.
16. The addition is not a “large” addition.
17. The applicant designed an addition reduced in size from what is otherwise allowed on the site and the addition maintains compatibility with the

Historic Structure in materials, features, size, scale, and proportion, and massing to protect the integrity of the Historic Structure, the Historic Site, and its environment.

18. The applicant designed an addition that reduced the footprint by 692.5 square feet below what is allowed for the site.
19. The addition meets Setbacks more restrictive than otherwise allowed.
20. The applicant designed an addition that is below allowable Building Height.
21. The analysis of the staff report is incorporated herein.

Conclusions of Law

1. The Historic District Design Review as approved on March 10, 2022, conforms to the requirements of the Land Management Code.

Board Member Wilson seconded the motion.

VOTE: The motion passed with the unanimous consent of the Board.

6. ADJOURN

MOTION: Board Member Wilson moved to adjourn. The motion was seconded by Board Member Wintzer.

VOTE: The motion passed with the unanimous consent of the Board.

The Board of Adjustment Meeting adjourned at approximately 8:05 p.m.

Approved by _____
Ruthie Gezelius, Board of Adjustment Chair

Board of Adjustment Staff Report



Subject: 51 Daly Avenue
Application: PL-22-05280
Author: Lillian Lederer, Planner I
Date: July 12, 2022
Type of Item: Variance- Administrative

Recommendation

Staff recommends that the Board of Adjustment (I) review the proposed application; (II) conduct a public hearing; and (III) consider approving the Applicant's request for Variances from the:

1. Front Setback - an exception granting the front porch to encroach 3.65 feet in the front Setback;
2. Side Setback - an exception granting the south side of the structure to encroach 1.65 feet into the side Setback;
3. Building Height - an exception granting the maximum Building Height by six feet,

pursuant to Land Management Code [Section 15-10-8](#) based on the Draft Findings of Fact, Conclusions of Law, and Conditions of Approval (Exhibit A).

Description

Applicant: Patrick Van Horn
Location: 51 Daly Avenue
Zoning District: Historic Residential (HR-1)
Adjacent Land Uses: Residential
Reason for Review: Variances require Board of Adjustment approval¹

LMC Land Management Code
HR-1 Historic Residential – 1

Terms that are capitalized as proper nouns throughout this staff report are defined in LMC § [15-15-1](#).

Background

The Planning Department received a Variance application for Setbacks and Height on June 8, 2022, for 51 Daly Avenue. The Applicant currently owns both 22.7 feet of Lot 5 and all of Lot 6 of Block 73, which encompass 51 Daly Avenue. 51 Daly Avenue is in the Historic Residential – 1 (HR – 1) Zoning District. The Applicant proposes to combine the Lots into one Lot and convert the right



¹ LMC § [15-1-8](#)

driveway space into living space. The Applicant is proposing to use this structure as a Single-Family Dwelling (see Condition of Approval 8), which is an Allowed Use in the HR – 1 Zoning District.

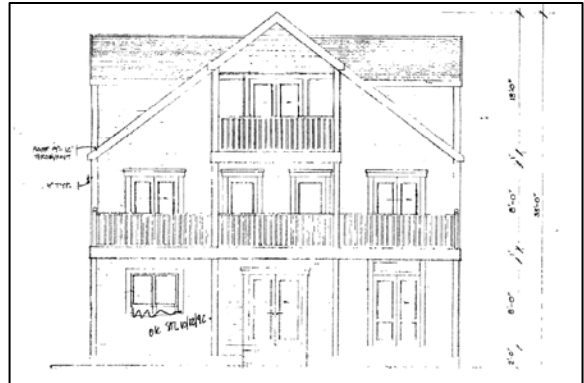
The image below, provided by the Applicant, shows 51 Daly Avenue, which was historically a Duplex and is now proposed to be used as a Single-Family Dwelling:



51 Daly Avenue is a Single-Family Dwelling that was constructed in 1992. The Historic District Commission reviewed a 1992 Historic District Design Review for new construction, as was then required by the LMC, but no additional renovations were made at that time. The 1992 review, and approved plans, establish that the original structure was a Duplex, which was an Allowed Use under the 1992 Land Management Code. Per the 1992 Land Management Code, a Duplex had a front Setback of ten feet, side Setbacks of five feet, and maximum height of 32 feet. Additionally, there is no historical indication of progression with this structure after that review.

The 1992 plans show a front 10' Setback, and 5' side Setbacks, as required by the 1992 code. The plans also show a 33' tall structure. The current survey, however, shows that the structure was not built according to the approved plans (see Exhibit C).

The images below illustrate the plans approved in 1992, where the structure's setbacks were drawn to be compliant with the 1992 LMC:



34

LMC.

LMC [§ 15-1-11\(B\)](#) states “[t]he Board of Adjustment must review Applications for Variances. Such approval must be obtained from the Board of Adjustment prior to the issuance of any . . . approval by the Planning Commission or Planning Department. All action on an Application shall be stayed upon the determination that a Board of Adjustment approval is required.” To bring a Subdivision Plat application to the Planning Commission and City Council to establish a Lot to accommodate proposed enclosure of the driveway to convert the area to living space, the Applicant has requested a Variance to the front and south side Setback, and height.

Analysis

(I) The Applicant seeks a Variance from the Historic Residential-1 (HR-1) Zoning District Front Setback, Side Setback, and Building Height Requirements outlined in LMC [§ 15-2.2-3](#).

The Applicant proposes combining Lots 5 and 6 to create one lot for the Single-Family Home. Lot 5 is 22.7 feet wide, and Lot 6 is 21.5 feet wide; the combination of the Lots creates a 44.2-foot-wide Lot. The length of the Lot is 100 feet. If the City Council approves the Lot combination, the proposed Lot will be 4,200 square feet.

The Land Management Code from 1992 (see Exhibit D, pg. 1-2) dictates that for a Duplex in the HR-1 Zoning District, the side Setback was 5’ and the front and rear Setbacks were 10’ each. Therefore, the existing structure does not fully comply with the 1992 LMC HR-1 Zoning District Setbacks, nor current LMC HR-1 Zoning District Setbacks.

[LMC § 15-2.2-3\(G\)\(3\)](#) states, “the Front Setback must be open and free of any Structure except: decks... not more than ten feet (10’) wide and projecting not more than three feet (3’) into the Front Setback. The existing deck in the front façade is 34 feet long, of which, approximately 24 feet protrudes into the front Setback by 3.65’. The protrusion is .65 feet over current LMC deck exceptions in the front Setback, and 14 feet longer than allowed for an exception. Decks were not an exception in the front Setback under the 1992 LMC (see Exhibit E, pg. 3) and the deck is not compliant with either LMC.

The south side of the structure encroaches into the side Setback by 2.65’, which is not compliant with the 1992 LMC, nor with the current [LMC § 15-2.2-3\(I\)](#), which requires a side Setback of 5 feet.

According to the 1992 LMC (Exhibit E, pg. 4), the maximum height for the HR-1 Zoning District was 28’, with up to 5’ extension of a gable or similar pitched roof. The existing structure has a gable roof and is 33’ which is not compliant with the 1992 LMC, nor with the current [LMC § 15-2.2-5](#).

The table below illustrates the requirements of the LMC in the HR-1 Zoning District in 1992 and the current code:

Zoning Requirement	1992 LMC Analysis	2022 LMC Analysis
Minimum Lot Size	Required- 3750 sf (for Duplex) Complies- 4200 sf (No Variance requested)	Required- 1875 sf (for Single Family Dwelling) Complies- 4200 sf (No Variance requested)
Lot Width	Required- 25' Complies- 44.2' (No Variance requested)	Required- 25' Complies- 44.2' (No Variance requested)
Maximum Building Footprint- Determined by (LOT AREA/2) x 0.9 ^{AREA/1875}	Did not exist (No Variance requested)	$(4200/2) \times 0.9^{4200/1875}$ $2100 \times 0.9^{2.24}$ $2100 \times .789774707104278$ 1658.526884918983 $= 1658.53$ sf allowed Complies- 1370 sf existing (No Variance requested)
Minimum Front and Rear Setback	Minimum Front and Rear Setback - 10' each Front Setback: Not Compliant- 7.35' The Duplex is compliant with the 1992 10' Setback; however, 24.7' of the front deck extends into the front Setback by 3.65'. Per the LMC decks are an exception to the front Setback that are "...not more than ten feet (10') wide and projecting not more than three feet (3') into the Front Setback." The deck projects into the front Setback by 3.65' and is more than 10' wide and is therefore non-complying. (Variance requested) Rear Setback: Complies- 13' (No Variance requested)	Minimum Front and Rear Setback- 12'/13' for a total of 25' Front Setback: Not Compliant- 7.35' The Single-Family Dwelling is compliant with the 12' Setback. However, of the 34' front deck, 24.7' of the deck extends into the front Setback by 3.65' (~90 sf). Per the LMC § 15-2.2-3(G), decks are an exception to the front Setback that are "...not more than ten feet (10') wide and projecting not more than three feet (3') into the Front Setback." The deck projects into the front Setback by 3.65' and is more than 10' wide and is therefore non-complying. (Variance requested) Rear Setback: Complies- 13' (No Variance requested)
Minimum Side Setbacks	Minimum Side Setbacks- 5' each (for Duplex) North side Setback: Complies- 5'	Minimum Side Setbacks- 5' each (for Single Family Dwelling) North side Setback:

	(No Variance requested) South side Setback: Not Compliant- 3.35' (Variance requested)	Complies- 5' (No Variance requested) South side Setback: Not Compliant- 3.35' (Variance requested)
Maximum Building Height	Maximum Building Height- 27' However, "The ridge of a gable, hip, gambrel, or similarly pitched roof may extend up to five feet about the specified maximum height limit for the zone." Not Compliant- 33' Structure is one foot above the compliance of height requirements (over 5' above the maximum Building Height for the zone)	Maximum Building Height- 27' Not Compliant- 33' Structure is six feet above the compliance of height requirements, as roofs height is not an exception to Building Height (over 5' above the maximum Building Height for the zone)

The Applicant is therefore requesting Variances from the Front Setback, Side Setback, and Building Height as follows:

- The deck: allowing it as exception in the Front Setback. This is under the condition that no other structures are allowed to be built out to the front Setback (see Condition of Approval 2).
- The south Side Setback: the Applicant is requesting the entire side Setback to be reduced from five feet to 3.35' (see Condition of Approval 3).
- The maximum Building Height: allowing the structure to remain 33' tall. This is under the condition that no other structures are allowed to be built above existing height requirements (see Condition of Approval 4).

Regarding the south Side Setback, the Applicant is requesting that the Variance be applied to the entire side, and not just the existing structure, to be able to add additional square footage on that side of the structure. The Applicant would request that Condition of Approval 3 be removed to allow for this construction.

There are no existing encroachments on the property, and the proposed Variances do not create necessary encroachments on adjacent properties.

(II) The proposal complies with the Variance criteria outlined in LMC [§ 15-10-8\(C\)](#).

In order to grant the requested Variances to the Front and Rear Setbacks, and to the Building Height, the Board of Adjustment must find that all five (5) criteria outlined in LMC [§ 15-10-8](#) are met. The applicant bears the burden of proving that all the conditions justifying a Variance have been met (see Exhibit B for the Applicant's Narrative).

In determining whether or not enforcement of the Zoning Ordinance would cause unreasonable hardship under LMC Section [15-10-9\(C\)\(1\)](#), the Board of Adjustment may not find an unreasonable hardship unless the alleged hardship is located on or associated with the Property for which the Variance is sought and comes from circumstances peculiar to the Property, not from conditions that are general to the neighborhood. In determining whether or not the enforcement of the LMC would cause unreasonable hardship, the Board may not find an unreasonable hardship if the hardship is self-imposed or economic.

The Applicant seeks Variances from the Side and Front Setbacks and Building Height to convert a portion of parking area into living area. Without the Board's approval, no Subdivision Plat can be approved, and no structural improvements may be made to the non-complying Structure.

Per [LMC § 15-10-8](#), "the Applicant shall bear the burden of proving that all of the conditions justifying a variance have been met." The Applicant's analysis is found below:

Variance Review Criteria	Analysis of Proposal
1. Literal enforcement of the Land Management Code would cause an unreasonable hardship for the Applicant that is not necessary to carry out the general purpose of the Land Management Code;	<u>Applicant's Statement:</u> The house was built in the 1990s, moving the entire house would be a very big hardship to be in compliance with today's codes. It would be unreasonable to move the house for a few feet in my opinion. It is unreasonable to require me to build within current Setbacks because my existing house was built incorrectly so long ago. It would not be a burden to anyone and would be granting me my right as a property owner.
2. There are special circumstances attached to the Property that do not generally apply to other Properties in the same zone;	<u>Applicant's Statement:</u> Because the house has been in the same spot for so many years with no issues, I do not see any issues going forward with current location. In addition to that, requiring me to build within the current set back would make the house look very odd and have walls that would not look uniform to the neighborhood. I simply want to close in my driveway on the right side of the house and make the house uniform on both sides (symmetrical). This would improve the look and neighborhood feel.
3. Granting the variance is essential to the enjoyment of a substantial Property right possessed by other Property in the same zone;	<u>Applicant's Statement:</u> I am unable to enjoy my house to the fullest because the current house is not within the Setbacks. And I cannot add onto my house. I want to be able to continue the footprint of the house and close in my garage, I would not be extending any walls beyond

	current footprint/driveway. It is unreasonable to require me to build within current Setbacks because my existing house was built incorrectly so long ago. Granting this Variance would be essential in updating the house to current finishes. The house has been in disrepair for some time, so letting me clean it up and make it nice would be a great thing for myself and the entire neighborhood.
4. The variance will not substantially affect the General Plan and will not be contrary to the public interest; and	<u>Applicant's Statement:</u> The Variance would not hurt the general plan. By fixing the exterior and keeping up with maintenance, it would improve the neighborhood. My house would fit in great with the rest of the neighborhood. I would stay within the allowable footprint, and follow the rest of the codes within Park City.
5. The spirit of the Land Management Code is observed and substantial justice done.	<u>Applicant's Statement:</u> When the house was built, it was apparently built in the wrong spot given the Setbacks. I would just need this Variance to be granted and the rest of my work would all be within current Land Management Code.

Staff finds the request for Variance to the side Setback, front Setback, and Building Height for the current structure reasonable and consistent with the conditions required.

The existing Single-Family Dwelling straddles two Lots. To modify structural elements of the Single-Family Dwelling, the property owner must apply for a Subdivision to combine the Lots. The Subdivision Application cannot be approved unless the Variances are granted.

Staff finds that the spirit of the Land Management Code is observed, and substantial justice is done. Granting the Variances will permit the owner to become more compliant with the current requirements of the Land Management Code, to record a Subdivision Plat, and then make improvements to their property. All other LMC-related site and lot criteria, including the other Setbacks, footprint, parking, design, uses, etc. will be met.

(III) The Development Review Committee reviewed the proposal on May 17, 2022, and did not identify any issues.

Department Review

The Development Review Committee, Planning, Engineering, Public Utilities, and Legal Departments reviewed this application.

Notice

Staff published notice on the City's website and posted notice to the property on June 28, 2022. Staff published notice on the Utah Public Notice website on June 28, 2022.

Staff mailed courtesy notice to property owners within 300 feet on June 28, 2022. The *Park Record* published notice on June 28, 2022².

Public Input

Staff received inquiries regarding the project, but did not receive any public input at the time this report was published.

Alternatives

- The Board of Adjustment may grant the Variances requested according to the Findings of Fact, Conclusions of Law, and Conditions of Approval (Exhibit A) and/or as amended; or
- The Board of Adjustment may deny the Variances requested and direct staff to make findings of fact to support this decision; or
- The Board of Adjustment may continue the discussion and request additional information on specific items.

Exhibits

Exhibit A: Draft Final Action Letter

Exhibit B: Applicant's Variance Narrative

Exhibit C: Site Plans and Survey

Exhibit D: 1992 LMC HR-1 Zone

Exhibit E: 1992 LMC Exceptions

² LMC [§ 15-1-21](#).



July 12, 2022

Patrick Van Horn
PO Box 681084
Park City, UT 84068
(920) 912-7277; patrick@vanhornre.com

NOTICE OF BOARD OF ADJUSTMENTS ACTION

Description

Address: 51 Daly Avenue

Zoning District: Historic Residential – 1 (HR-1)

Application: Variance

Project Number: PL-22-05280

Action: Approved with Conditions

Date of Final Action: July 12, 2022

Project Summary: A request for Variances from the Front and South Side Setback pursuant to Section 15-2.2-3, and from Maximum Building Height pursuant to Section 15-2.2-4 in order to record a Subdivision Plat of the 51 Daly Avenue site.

Action Taken

On July 12, 2022, the Board of Adjustments conducted a public hearing and approved the Variances to the existing Single-Family Dwelling according to the following Findings of Fact, Conclusions of Law, and Conditions of Approval.

Findings of Fact

1. The property is located at 51 Daly Avenue in the Historic Residential-1 (HR-1) Zoning District.
2. The HR-1 zone is characterized by historic and contemporary homes on one (1) to two (2) lot combinations.
3. The structure on the site was built as a Duplex in 1992, but currently is a Single-Family Dwelling.
4. The Single-Family Dwelling resides on two lots. Lot 5 is 22.7 feet and Lot 6 is 21.5 feet, for a total width of 44.2 feet.
5. The property consists of 4,200 square feet.

6. There is an existing ~1,370 square foot non-historic Single-Family Dwelling on the property.
7. The current structure is 33', which is not compliant with the 1992 LMC or current LMC.
8. The Applicant is requesting a Variance to LMC § 15-2.2-4, to allow the structure to remain at six feet above zone height.
9. The current LMC requires a 12' Front Setback if the Rear Setback is 13'.
10. The existing house has a rear Setback of 13' and is compliant with the LMC.
11. The existing house is set back from the front property line by 10', which was compliant with the 1992 LMC.
12. Approximately 24' of the Deck on the front façade extends 3.65' into the front Setback, which was not compliant with the 1992 LMC.
13. The Applicant is requesting a Variance to LMC § 15-2.2-3(G) to reduce the current required 12' front yard Setback to 7.35'.
14. The current LMC requires a 5' Side Setback for Lots with widths up to 50'.
15. The north side of the structure is compliant with the required side Setback in the LMC.
16. The south side of the structure encroaches into the side Setback by 2.65'.
17. The Applicant is requesting a Variance to LMC § 15-2.2-3(I) to reduce the required 5' South Side Setback to 3.35'.
18. Literal enforcement of the LMC would cause an unreasonable hardship for the Applicant that is not necessary to carry out the general purpose of the LMC as there are circumstances specific to this property that are unique and are not conditions general to the neighborhood. Recording old town lots on Plats is a usual and encouraged practice by the City. Without the Variances, the Owner cannot record a Plat. (Criteria 1)
19. There are special circumstances attached to this property that do not generally apply to other Properties in the same zone. Without granting the Variances, the Owner cannot record a Plat and cannot make external changes to their Single-Family Dwelling. (Criteria 2)
20. Granting the Variances are essential to the enjoyment of a substantial property right possessed by other property in the same zone. Granting the Variances allows the property owner to record a Plat, to make external changes to their Dwelling, and fully enjoy their property rights. (Criteria 3)
21. The Variances will not substantially affect the General Plan and will not be contrary to public interest. The proposal is compliant with Goals 1, 7, and 14 of the General Plan. (Criteria 4)
22. The spirit of the Land Management Code is observed, and substantial justice is done. Granting the Variances will allow the applicant to record a Plat and expand their home within the allowed Building Footprint of HR-1 Zone Requirement's. (Criteria 5)
23. All other LMC related site and lot criteria, including the other Setbacks, footprint, parking, Uses, etc. will be met.

Conclusions of Law

1. Literal enforcement of the HR-1 District requirements for this property causes an

unreasonable hardship that is not necessary to carry out the general purpose of the zoning ordinance.

2. There are special circumstances attached to the property that do not generally apply to other properties in the same district.
3. Granting the Variances is essential to the enjoyment of a substantial property right possessed by other property in the same zone.
4. The proposal is consistent with the General Plan.
5. The spirit of the zoning ordinance is observed by this application.

Condition of Approval

1. The Variances are limited to the existing Single-Family Dwelling as built, and indicated on the plans submitted with this application dated June 30, 2022, unless otherwise approved with an HDDR approval.
2. Aside from the existing deck, no other structures allowed in the front Setback. Front Setback Exceptions found in LMC § 15-2.2-3(G) are only allowed under the required zone Setback of 12'. Modification to the front deck, aside from structural repairs, is not allowed, or the owner is required to bring the deck into compliance with current LMC.
3. Aside from the existing structure, no other structures are allowed in the south side Setback. Side Setback Exceptions found in LMC § 15-2.2-3(J) are only allowed under the required zone Setback of 5'.
4. The June 20, 2022, plans do not modify the current height of 33', and any future changes made to the structure must comply with zone height pursuant to LMC § 15-2.2-5.
5. The Applicant shall record a Subdivision Plat for 51 Daly Avenue prior to the issuance of a building permit for any new construction. If a plat amendment is denied, this application shall be void and the structure shall remain regulated by the LMC § 15-9-6 re: non-complying structures.
6. The occupancy/single family use following the new construction must be compliant with Off-Street parking regulations found in LMC § 15-3-6.
7. The Applicant will need to submit an HDDR application for the proposed design to the Planning Department for review for compliance with the Design Guidelines for Historic Districts and Historic Sites prior to the issuance of a building permit for the new construction.
8. The Use of this structure shall be limited to Single-Family Dwelling.
9. Any new construction must be compliant with the current LMC.

If you have questions or concerns regarding this Final Action Letter, please call 435-615-5068 or email lillian.lederer@parkcity.org

Sincerely,

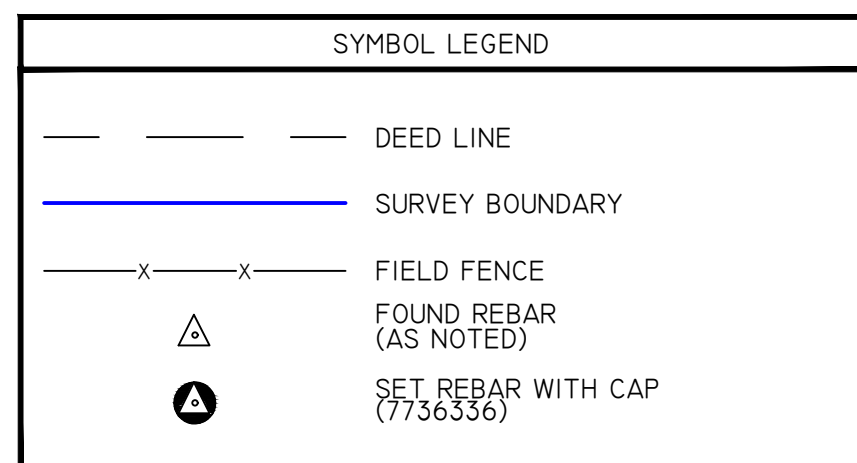
Ruth Gezelius
Board of Adjustments, Chair
CC: Lillian Lederer, Planner I

PVH Developers, LLC
51 Daly Ave
Park City, UT, 84060

To Whom It May Concern:

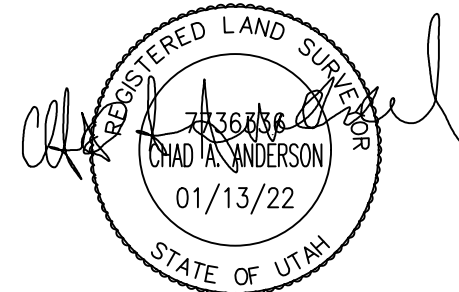
My name is Patrick Van Horn, I recently purchased 51 Daly in late summer of 2021. My plan was to remodel it and add some square footage to the ground floor. I then had to start the process of a plat amendment because it was on two small lots, technically. A few months into that process we discovered that the survey came back and said the setbacks were not correct. The south side of the property was supposed to have a setback of 5 feet. According to the new survey they are closer to 3.52 and 3.35 feet. The house was built in 1993 and moving the entire house or side of it to clear the 5 feet would be extremely difficult. Therefore, I am asking for a variance to this code. This variance would not have any effect on any public land or get in the way of anything. In fact, I would not be changing where my current building or driveway is. I would be using the driveway footprint and just enclosing it. You can see in the site plans where the existing driveway would be and see that I am not trying to encroach any closer to the lot line, but simply enclose it. Please let me know if you have any questions.

Thank you,
Patrick Van Horn



I, CHAD A. ANDERSON, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR AND THAT I HOLD CERTIFICATE NO. 7736336, AS PRESCRIBED UNDER THE LAWS OF THE STATE OF UTAH. I HEREBY CERTIFY THAT I HAVE MADE A SURVEY OF THE HEREON DESCRIBED PARCEL AND THAT THIS PLAT IS A TRUE AND CORRECT REPRESENTATION OF SAID SURVEY.

CHAD A ANDERSON - PLS _____ DATE _____

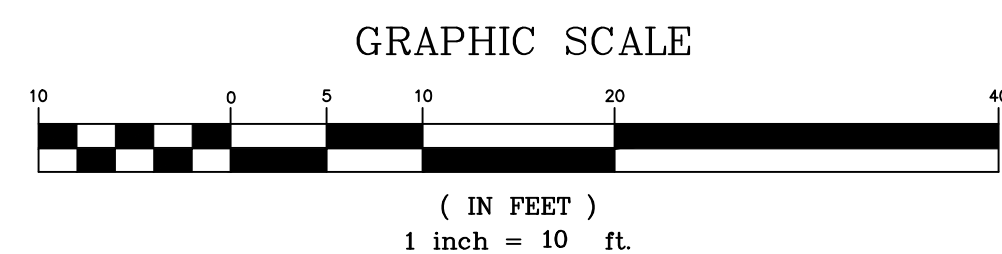


THE PURPOSE OF THIS SURVEY IS TO PROVIDE AN EXISTING CONDITIONS SURVEY TO AID IN THE FUTURE PLAT AMENDMENT. SURVEY WAS PERFORMED IN JANUARY OF 2022. AT THE TIME OF THE SURVEY THE SITE WAS COVERED IN 1-2 FEET OF SNOW. EFFORTS WERE MADE TO GATHER ALL PERTINENT INFORMATION, BUT DUE TO TO CONDITIONS, SOME ITEMS MAY HAVE BEEN MISSED.

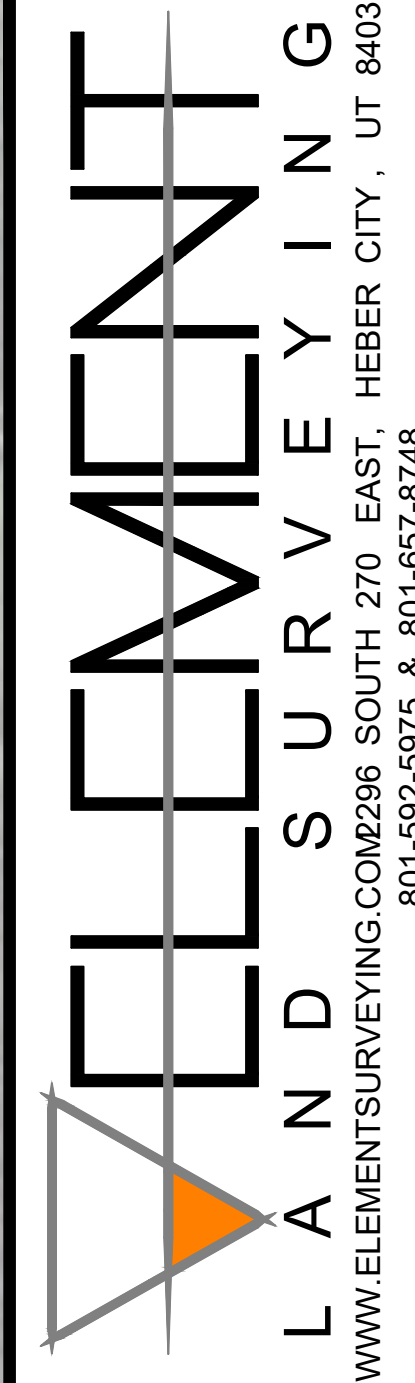
ENT 01169693 BK:2682 PG:1320-

THE SOUTH 22.7 FEET OF LOT 5 AND ALL OF LOT 6, BLOCK 73, MILLSITE RESERVATION TO PARK CITY, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD, IN THE OFFICE OF THE SUMMIT COUNTY RECORDER.

BASIS OF BEARINGS: N21°33'00"E BETWEEN MONUMENTS IN DALY AVE. PER SURVEY NO.679973 AS SHOWN
HEREON.



5/11/2022 4:44:59 PM



EXISTING CONDITIONS SURVEY

SUMMIT COUNTY
IN THE NE 1/4 OF SEC 21, T2S, R4E, SLB88M

RICH CLIFTEN

DALY AVE
PARK CITY

PREPARED FOR:

21-12/447

PROJECT:

1 OF 1

REMODEL FOR:

VAN HORNE

GENERAL NOTES

THE GENERAL CONTRACTOR ASSUMES FULL RESPONSIBILITY TO VERIFY THE CONDITIONS, DIMENSIONS, AND STRUCTURAL DETAILS OF THE BUILDING. THE CONTRACTOR ASSUMES FULL LIABILITY FOR ANY PROBLEMS THAT MAY ARISE DUE TO POSSIBLE ERRORS ON THESE PLANS. USE OF THESE PLANS CONSTITUTES COMPLIANCE WITH THE ABOVE TERMS.

WORKMANSHIP THROUGHOUT SHALL BE OF THE BEST QUALITY OF THE TRADE INVOLVED AND THE GENERAL CONTRACTOR SHALL COORDINATE THE WORK OF THE VARIOUS TRADES TO EXPEDITE THE JOB IN A SMOOTH AND CONTINUOUS PROCESS.

ALL CONSTRUCTION SHALL BE IN ACCORDANCE TO THE 2015 IRC.

UNLESS OTHERWISE NOTED, ALL DETAILS, SECTIONS AND NOTES SHOWN ON THE CONTRACT DRAWINGS ARE INTENDED TO BE TYPICAL AND SHALL APPLY TO SIMILAR CONDITIONS ELSEWHERE.

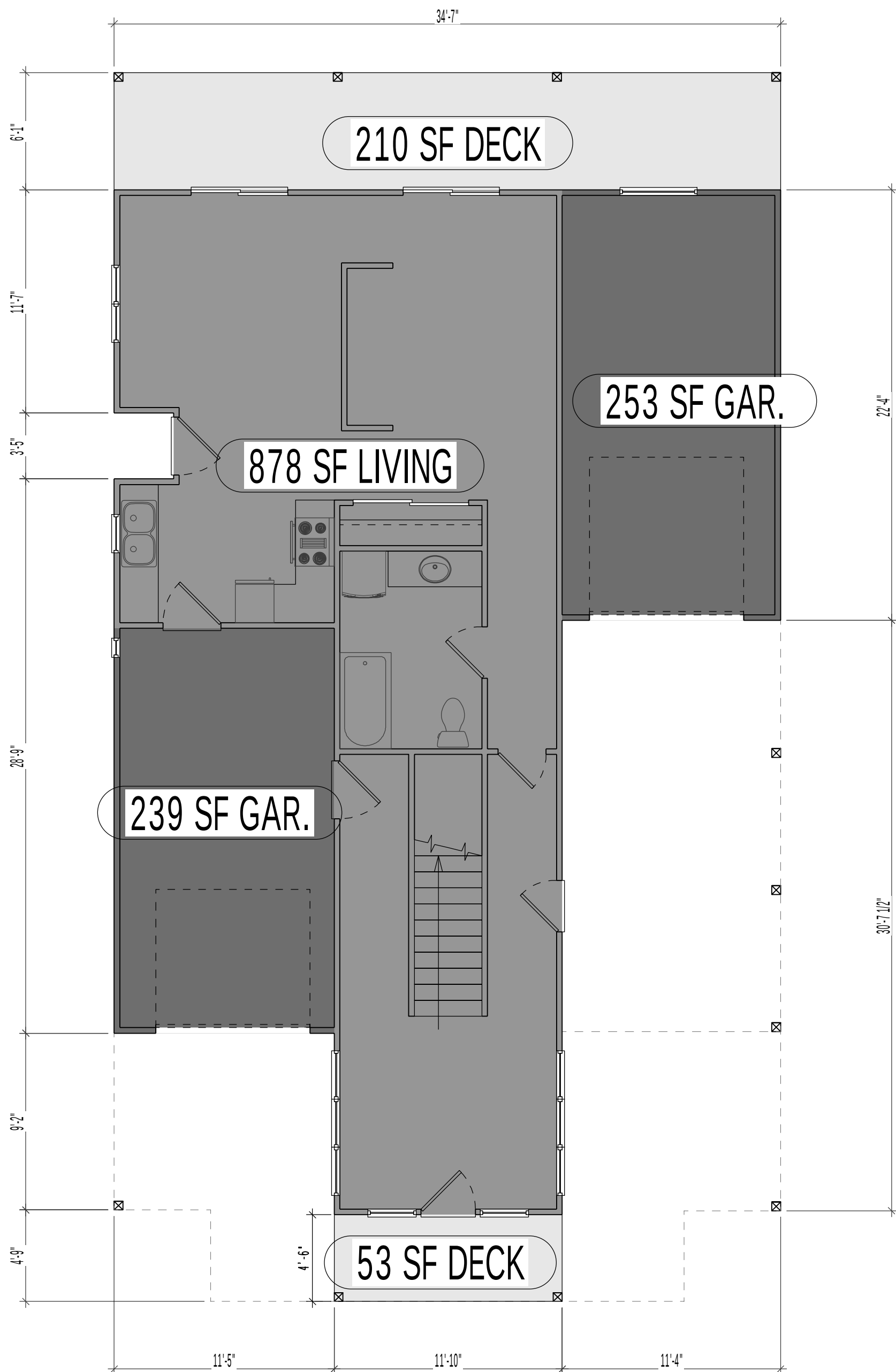
ALL OMISSIONS OR CONFLICTS BETWEEN THE VARIOUS ELEMENTS OF THE CONTRACT DRAWINGS AND/OR SPECIFICATIONS SHALL BE BROUGHT TO THE ATTENTION OF THE DESIGNER BEFORE PROCEEDING WITH ANY WORK. NOTE THAT ALL WRITTEN DIMENSIONS TAKE PRECEDENCE OVER SCALE. THE GREATEST EFFORT HAS BEEN MADE TO DRAW THESE PLANS WITHOUT ERROR (HOWEVER) THERE IS NO GUARANTEE THAT THESE PLANS ARE WITHOUT ERROR. THE DESIGNER & DRAFTSMAN ARE TO BE HELD HARMLESS OF ANY FINANCIAL LIABILITY RESULTING FROM ERRORS IN THESE PLANS. ANY ONE USING THESE PLANS FOR CONSTRUCTION OF BUILDING ACCEPTS FULL RESPONSIBILITY. REVIEW PLANS CAREFULLY AND NOTIFY DESIGNER OF ANY DISCREPENCIES.

THE GENERAL CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF AND THE SAFETY IN AND AROUND THE JOB SITE AND OF ADJACENT PROPERTIES.

THE GENERAL CONTRACTOR AND/OR OWNER SHALL KEEP LOADS ON THE STRUCTURE WITHIN THE LIMITS OF THE DESIGN BOTH DURING AND AFTER CONSTRUCTION.

COMPLIANCE WITH CODES AND ORDINANCES GOVERNING THE WORK SHALL BE MADE AND ENFORCED BY THE GENERAL CONTRACTOR.

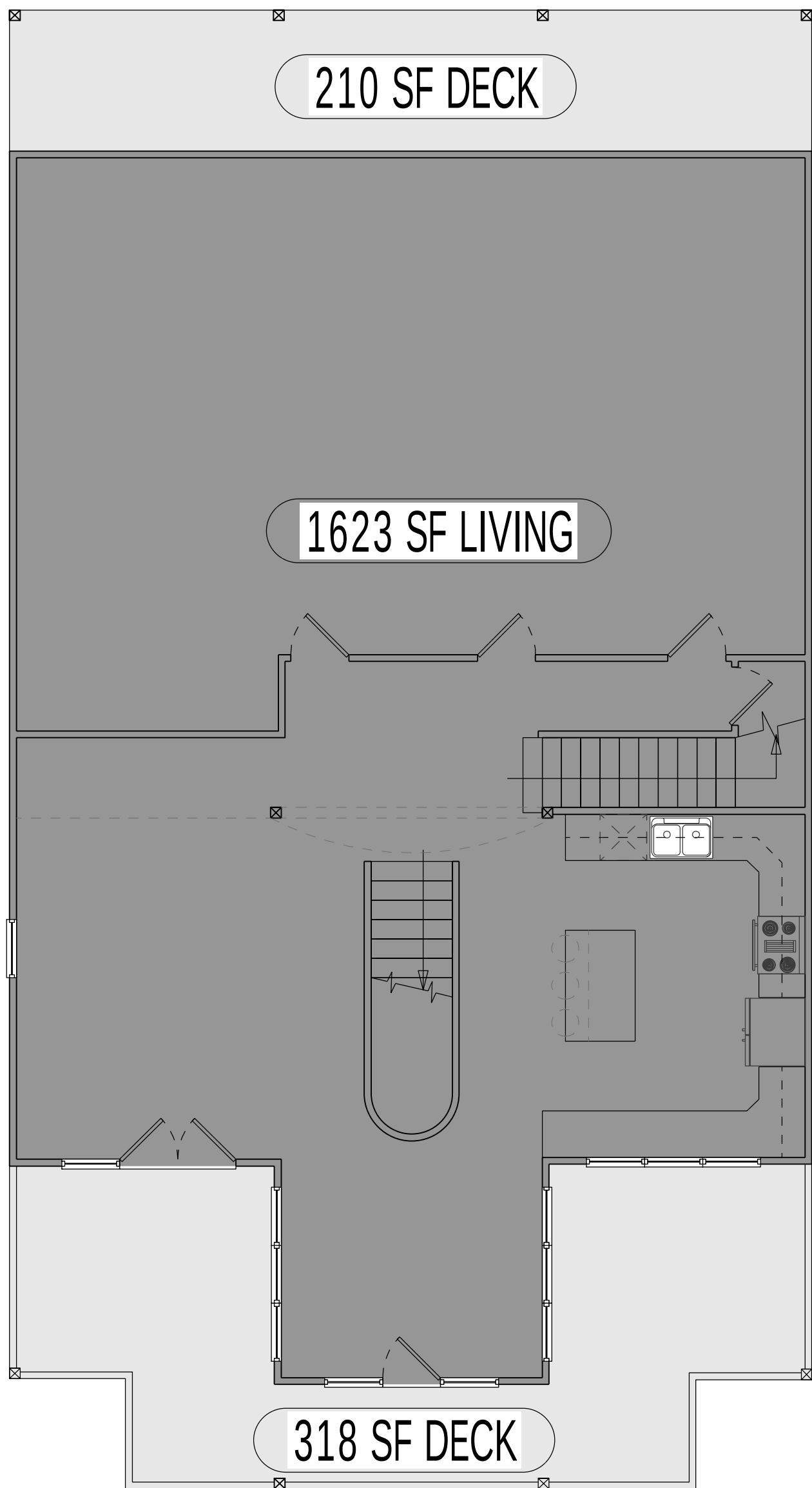
MANUFACTURER'S SPECIFICATIONS FOR INSTALLATION OF MATERIALS SHALL BE FOLLOWED.



EXISTING MAIN FLOOR PLAN

Scale: 3/16" = 1'

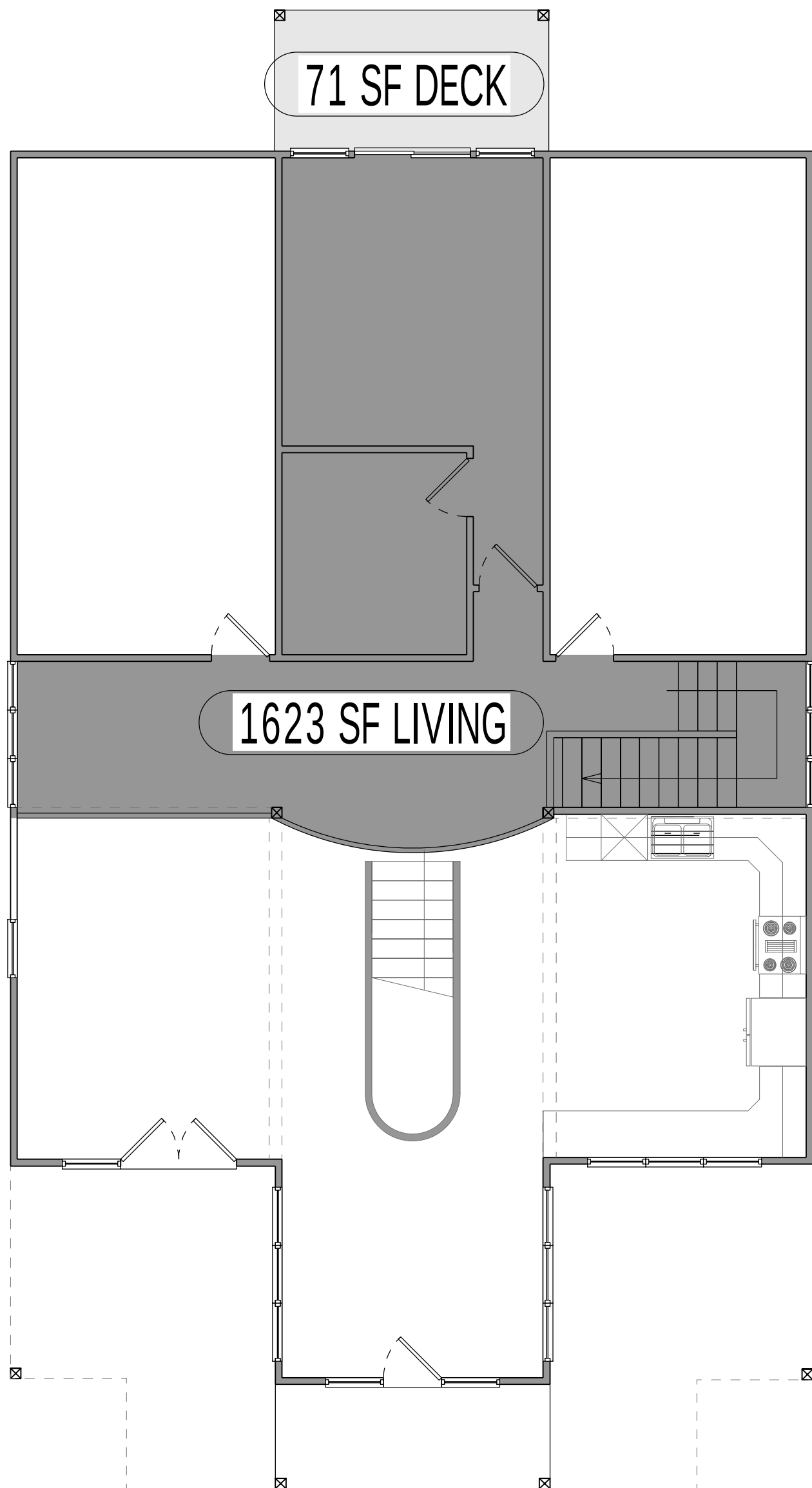
878 SQFT
492 SQFT GARAGE



EXISTING UPPER FLOOR PLAN

Scale: 3/16" = 1'

1623 SQFT



EXISTING LOFT FLOOR PLAN

Scale: 3/16" = 1'

510 SQFT



REMODEL FOR:
VAN HORNE

51 DALY AVE. PARK CITY, UTAH

220512

A2.0

CHAPTER 7. DISTRICTS AND REGULATIONS

7.1. HISTORIC RESIDENTIAL (HR-1) DISTRICT

7.1.1. PURPOSE. The purpose of the Historic Residential HR-1 District is to allow the preservation of the present land uses and the character of the historic residential areas of Park City, and to encourage the preservation of historic structures and the construction of new structures that preserve and contribute to the character of the district, and to encourage densities of development that will preserve the desirable residential environment, and also densities which are consistent with the inherent constraints on development within the narrow canyon areas and on areas that may have steep or substandard street systems.

7.1.2. PERMITTED USES. In the HR-1 district, no building or structure shall be erected which is arranged, designed, or intended to be used, or which is used for any purpose other than those purposes designated on the Use Table as being permitted uses (designated by the letter "A") or conditional uses (designated by the letter "C"). All other land uses are prohibited.

7.1.3. LOT SIZE AND COVERAGE REGULATIONS.

(a) Lot Size. The minimum lot area shall be 1,875 square feet for a single family residence; 3,750 square feet for a duplex, and 5,625 square feet for a triplex. The minimum width of a lot shall be 25 feet, measured 15 feet back from the front lot line.

(b) Floor Area Ratio. The floor area of all new structures constructed within the HR-1 District shall be limited by the Floor Area Ratio (FAR) which shall be the Floor Area as defined in Chapter 2, divided by the total area of the lot or parcel. For lots up to 1875 square feet, the maximum FAR shall be .9. For lots from 1876 square feet to 3750 square feet in area, the maximum FAR shall be .75. For lots larger than 3750 square feet in area, the maximum FAR shall be .6. In calculating the FAR for a single family structure, 400 square feet may be added to the total floor area for a two-car garage after calculating the FAR. For duplexes, triplexes and multi-unit structures, the garage addition shall be 400 square feet for each residential unit.

In an effort to further maintain Park City's Historic District, this Floor Area Ratio requirement shall not apply to renovations, additions, or expansions to historic structures (structures at least 50 years old, as approved by the Historic District Commission).

(c) Side Yard. The minimum side yard for any structure of two units or more shall be 5 feet, except that a side yard shall

not be required between structures designed with a common wall on a lot line. The longest dimension of buildings thus joined shall not exceed 50 feet. The minimum side yard for a single family structure shall be 3 feet. For side yards of less than 5 feet, the special side yard exceptions as provided in Section 8.14. shall not apply, except for projections of less than 4 inches as specified in Section 8.14.(a) and for allowance for a driveway as specified in Section 8.14.(h). On corner lots, any yard which faces on a street for both main and accessory buildings shall not be less than 10 feet. For structures on lots exceeding 25 feet in total width, the sum of the side yard set backs must total 10 feet.

- (d) Rear Yard. The minimum depth of the rear yard for all main buildings shall be 10 feet and for accessory buildings shall be one foot from the rear property line. On corner lots which rear upon the side yard of an adjacent lot, accessory buildings shall be located no closer than 5 feet to the rear property line.
- (e) Front Yard. The minimum depth of the front yard for all main buildings and accessory buildings, including garages, shall be 10 feet. Open parking spaces may be permitted in the front yard area, but not within the minimum side yard area. "Open parking spaces" does not include carports.

7.1.4. SPECIAL PARKING REGULATIONS.

- (a) Tandem parking is permitted for single family and duplex dwellings in the Historic District.
- (b) To encourage the location of parking in the rear, common driveways may be permitted along shared side yard property lines where those drives provide access to parking in the rear of the main building. Restrictions on the deeds to both properties must provide for the preservation of such a shared drive.
- (c) Common parking facilities may be permitted, upon approval of the Planning Department, where such a grouping may facilitate the development of individual buildings that more closely conform to the scale of historic structures in the district as defined in the design guidelines. Parking structures may be permitted, provided that the structure maintains all yard set backs above grade, but may occupy below grade side yard areas between participating developments.
- (d) In order to minimize the amount of hard-surfaced paving in front yards, the following limits on the widths of paved areas for driveways and exposed parking that are visible from the street shall apply:

1. For a single family dwelling on a 25 foot wide lot, the total area of hard surface for drive and parking shall not exceed 12 feet in width. The balance of any parking area or drive area shall be made of porous paving material. Drives shared with adjoining properties shall not exceed 35 feet in total width, regardless of placement on the lots involved.
 2. For all other buildings, the total drive area shall not exceed 27 feet in width for hard surfaced drive and parking area, with additional parking and drive area provided with porous paving material. This hard surfaced width may be divided into separate drives, or in a single drive.
 3. Garage door openings on single family structures on 25 foot lots shall not exceed 10 feet in width. On single lots that are more than 25 feet, but less than 37.5 feet in frontage width, the garage door openings shall not exceed 16 feet in width. Duplex structures on 50 foot or wider lots may have one garage door opening (or combination of openings) totaling 18 feet in width for each unit of the duplex, or a total of 36 feet in width for the structure. Triplex structures, which are required to have a common underground parking area, shall have only one garage door opening, which shall not exceed 18 feet. Where garage door openings appear on a facade that does not face a street, so the garage is accessed from a common drive between adjoining properties, the Community Development Department may waive the maximum door width if necessary to make the common drive arrangement function.
- (e) It is the City's policy to consider allowing a portion of the length of a code required parking stall to be placed within the City right of way, subject to the City Engineer's approval. The City Engineer shall consider the likelihood of future roadway changes, utilities, and any other health/safety considerations which may render parking in the right of way unacceptable.

7.1.5. BUILDING HEIGHT. Structures shall be erected to a height no greater than 28 feet, as defined in Section 8.17. No volume or area above this 28 foot height may be used for facade variation open space.

7.1.6. SPECIAL REQUIREMENTS FOR CONDITIONAL USES. The following impacts shall be considered in reviewing conditional uses:

- (a) Scale of the building in relation to historic structures in

the district.

- (b) The need for increased yard areas and the resulting impact on the established set backs in the block.
- (c) The impact of noise or nearby residences.
- (d) The impact of traffic and on-street parking in the block.

7.1.7. CRITERIA FOR BED AND BREAKFAST INNS. Bed and Breakfast Inns may be approved as conditional uses by the Planning Commission. In making a determination whether a Bed and Breakfast Inn use is appropriate, the Planning Commission shall consider the following criteria:

- (a) Bed and Breakfast Inns are to be considered for structures of historical significance, whether or not they are officially listed on the National Register of Historic Places. As a part of the renovation of a structure as a Bed and Breakfast Inn, every attempt will be made by the applicant to restore the structure to its original condition so that it may become eligible for listing on the National Register.
- (b) Bed and Breakfast Inns are only appropriate for the larger residential structures in the Historic District. The houses should have a minimum of two rentable rooms. The maximum number of rooms will be determined by the applicant's ability to demonstrate that impacts such as parking and neighborhood compatibility can be adequately mitigated.
- (c) The length of stay for patrons of Bed and Breakfast Inns will be limited to less than 30 days (nightly rental).
- (d) It is preferable that Bed and Breakfast Inns have an owner/manager living on the site, but may, as a minimum requirement, have 24 hour on site management and check in. The check in facility may be off site if it is within close proximity of the Bed and Breakfast Inn.
- (e) Common kitchen facilities are allowed for the benefit of overnight guests only and are not intended to serve outside visitors. Individual kitchens within rooms shall not be permitted.
- (f) Signage shall be limited to one sign which shall not exceed six square feet in size. A permit must be obtained for the sign and it must comply with the provisions of the Park City Sign Ordinance.
- (g) Parking shall be provided on site at a rate of one space per rentable room. If no on site parking is possible, parking in close proximity to the Inn shall be provided. The Planning

Commission may waive the parking requirement if it is found that no on-site parking is possible and all alternatives for other parking have been explored and exhausted. The Planning Commission must find that the structure which is to be a Bed and Breakfast Inn is not economically feasible to restore or maintain without the granting of the adaptive use. The burden of proof in requesting a parking exception shall be on the applicant. In no case may parking spaces on the downhill side of public streets and those partially or totally within the City right-of-way be counted toward parking requirement.

7.1.8. ARCHITECTURAL REVIEW. Prior to the issuance of building permits for any conditional or permitted use within this zone, the Community Development Department shall review the proposed plans for compliance with the architectural design guidelines prepared by the Historic District Commission and adopted by resolution of the City Council as a supplement to this Ordinance. Appeals of departmental actions on architectural compliance are heard by the Historic District Commission, and then may be appealed to the Council as set forth in Chapter 1 of this Code. Property within this zone may be subject to subdivision regulations and covenants that regulate design, materials, yard and height more strictly than this Code. This Code does not supersede more restrictive provisions in private covenants. In addition, no structure within the zone may be painted or repainted without review and approval of the exterior color scheme by the Community Development Department.

backs may be reduced to zero set back, except those lots fronting on a state highway, if any, or if the set back is necessary to comply with Section 8.9. of this Code. This reduction in the Prospector Square Commercial Subdivision is predicated on the preservation of the common areas, pedestrian malls, and common parking lots. If those common areas do not exist for the use and benefit of a lot on which development is proposed, the normal GC Zone requirements shall apply.

8.12. HOME OCCUPATION. A home occupation is a lawful use conducted and carried on entirely within a dwelling by persons residing in the dwelling or by those persons at sites away from the dwelling, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof. A home occupation shall not include the sale of goods or merchandise except those which are produced on the premises and shall not involve the use of any yard space or activity outside of the buildings not normally associated with residential use. The use of mechanical equipment shall be limited to small tools whose use shall not generate noise, smoke, or odors perceptible beyond the premises of the dwelling. Home occupation will not allow a resident, professional or otherwise, to use the dwelling for his general practice when that practice is normally associated with some other zoning district. Home occupation will, however, allow the use of the dwelling by a physician, dentist, lawyer, clergyman, engineer or the like for consultation or emergency treatment. Consultation shall include the use of a dwelling to receive mail and maintain a telephone or automatic answering device related to the home occupation, but shall not allow frequent or constant visitation to the residence by clients to transact business. Home occupation shall include the care of fewer than three children other than members of the family residing in the dwelling. In all cases, there shall be no advertising of said home occupation by window displays or signs, and no one outside of the immediate family may be employed. In the event covenants applicable to the property preclude this use, the covenants shall control.

8.13. CONDOMINIUM CONVERSION. Existing structures shall not be converted to condominium ownership without first receiving the review and recommendation of the Community Development Department, City Attorney, and plat approval from the City. Required public improvements and landscaping shall be completed at the time of conversion or security provided to ensure completion as provided by ordinance. The structure must be brought into substantial compliance with the building code as a condition precedent to plat approval. (Timeshare conversion is addressed in Section 8.20.)

8.14. SIDE YARD EXCEPTIONS. The area of a required side yard shall be open and unobstructed except for the following and similar uses:

- (a) The ordinary projections of window sills, belt courses, cornices, and other ornamental features to the extent of not more than four inches.
- (b) The projection of an eave not more than two feet.
- (c) The projection of a step not over two feet.
- (d) Awnings projecting over doorways and windows not more than three feet.
- (e) A bay window or chimney not over ten feet long projecting not more than two feet, provided such extension maintains the minimum side yard allowable for the smallest side yard in that district.
- (f) A light or window well not over two feet in width.
- (g) Walls or fences not more than six feet in height.
- (h) A driveway leading to a properly located garage or parking area; however, a side yard cannot be used for a parking area except as hereinafter provided, nor for storage, nor can it be hardsurfaced in such a way as to make possible the parking of automobiles or other vehicles unless it is a driveway that leads to a garage or a properly located parking area in the rear yard.
- (i) A detached garage may be located in a side yard provided said garage meets the requirements specified for the district in which it is located, and the requirements of the Building and Fire Codes for buildings in close proximity to the lot lines.
- (j) Hot tubs, decks or similar uses at ground level shall be allowed in a side yard provided they are located at least ten feet from a dwelling on an adjoining lot or five feet from property line.

8.15. REAR YARD EXCEPTIONS. The area of a required rear yard shall be open and unobstructed except for the following which are permitted:

- (a) A bay window or chimney not over ten feet long projecting not more than two feet.
- (b) Window wells extending not more than four feet.
- (c) The projection of an eave or cornice not more than two feet.
- (d) Private swimming pools, tennis courts, and similar uses shall be allowed in a rear yard provided they are located at least

30 feet from any dwelling on an adjoining lot and at least ten feet from any property line.

- (e) Garages and other accessory buildings as hereinafter provided. Such structures shall not cover over 50% of the rear yard area.
- (f) Hardsurfaced parking areas subject to the same location requirements of a garage.
- (g) Underground bomb or fallout shelters for emergency use only provided they are constructed at least four feet from any property line and also that they conform to all requirements established by the Civil Defense Agency for approved shelters.
- (h) Air conditioners.
- (i) Fences not over six feet in height.
- (j) Hot tubs or similar uses shall be allowed in a rear yard provided they are located at least ten feet from a dwelling on an adjoining lot or five feet from property line.

8.16. FRONT YARD EXCEPTIONS. The area of a required front yard shall be open and unobstructed except for the following which are permitted:

- (a) A fence or wall not more than four feet in height; no fence more than three feet in height shall be allowed within 30 feet of the intersection on any corner lot.
- (b) Uncovered steps leading to the main building; provided, however, that they are not more than four feet in height and do not cause any danger or hazard to traffic by obstructing the view of the street or intersection. Any portion of any steps, covered or uncovered, that are more than four feet above grade must maintain the required setback line.
- (c) Eaves or cornices projecting not more than two feet.
- (d) A driveway leading to a properly located garage or parking area; provided, however, no portion of a front yard as required in this Code except for those approved driveways, shall be hardsurfaced or graveled so as to encourage or make possible the parking of automobiles, nor shall the City allow any curb cuts or approve any driveways except for entrance and exit driveways leading to properly located parking areas. Hardsurfaced parking may be permitted in the front yard of HR-1 and R-1 properties subject to compliance with the zone district requirements. Such parking shall not be permitted in the required side yard extended forward to the front property line.

- (e) Circular driveways shall be permitted in required front yard areas of single-family dwellings leading to and from a properly located garage or carport on the property subject to the following conditions:

1. Such drives shall be hardsurfaced.
2. Such drives shall not be over 16 feet in width.
3. There shall be an area in landscaping at least 15 feet in depth from the front property line to the inside of the drive.
4. Driveway areas are not to be used for the parking or storage of any trailer, camper, motor home, boat, or other equipment at any time, nor is the area to be used for permanent parking of any vehicle.
5. Passenger automobiles may be parked on driveways serving private residences, provided the automobile is parking completely on private property.

8.17. HEIGHT PROVISIONS. The total height of the building shall be measured as the vertical distance from the natural grade, as defined in this Code, to the highest point of a flat roof or the deck line of a mansard roof, or to a point midway between the lowest part of the eaves or cornice and the ridge of a hip or gable roof. In no case shall a mansard roof or the parapet wall of a flat roof extend more than 18 inches above the maximum height limitation in the zone. Roofs not fitting clearly any of the above three classifications shall be classified by the Community Development Director in accordance with the roof it most clearly resembles. Roofs which drain to the center shall be considered as flat or mansard depending on their configuration. To allow for roof pitches and provide usable space within the structure, the following exceptions apply:

- (a) The ridge of a gable, hip, gambrel, or similarly pitched roof may extend up to five feet above the specified maximum height limit for the zone.
- (b) Antennas, chimneys, flues, vents, or similar structures may extend up to five feet above the specified maximum height limit for the zone.
- (c) Water towers and mechanical equipment may extend up to five feet above the specified maximum height limit.
- (d) Church spires, bell towers, and like architectural features, as well as flag poles, may extend over the specified maximum height limit by up to 50% of the height limit, but shall not

contain any habitable spaces above the maximum zone height stated.

8.18. REGULATION OF SECONDARY LIVING QUARTERS WITHIN RESIDENTIAL DWELLINGS: Any request for secondary living quarters within residential dwellings shall be reviewed and approved by the Planning Department. The following criteria must be established prior to Building Permit issuance:

- (a) Size. The maximum size for secondary living quarters shall be 800 square feet. This amount shall be included in the total building square footage calculations for all structures.
- (b) Parking. One on-site parking space shall be provided in addition to the underlying parking requirement.
- (c) Single Utility Meters. The main dwelling and the secondary quarters shall be on the same utility meters.
- (d) Access. The secondary quarters shall be designed to have direct access into the main dwelling.
- (e) No Separate Leases. The secondary quarters shall not be rented or leased separately from the main dwelling. Nightly or seasonal rentals are prohibited.
- (f) Prohibited in Historic District. Secondary living quarters will not be approved in the Historic District.

8.19. SPECIAL REVIEW PROCESS FOR PASSENGER TRAMWAYS IN HR-1, HRL, AND HCB ZONES.

- (a) Conditional Use. The location and use of the liftway is a conditional use in the HR-1, HRL, and HCB Zones. The location of base and terminal facilities for the passenger tramway shall be a conditional use in the HCB zone. (See land use table for passenger tramways in other zones).
- (b) Conditional Use Review. Conditional use permits under this section shall be issued only after public hearing before the Planning Commission, and upon the Planning Commission finding that all the following conditions can be met:
 - 1. Ownership of Liftway. The applicant owns or controls the liftway necessary to construct and operate the passenger tramway. For the purpose of this section, ownership or control is established if the applicant can demonstrate that he has title to the property being crossed by the liftway, or an easement over that property, or options to acquire the property or an easement or a leasehold interest in the property (or an option to acquire a