



**PARK CITY BOARD OF ADJUSTMENT MEETING
SUMMIT COUNTY, UTAH
July 16, 2019**

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its Board of Adjustment Meeting at the City Council Chambers, 445 Marsac Avenue, Park City, Utah 84060 for the purposes and at the times as described below on Tuesday, July 16, 2019.

MEETING CALLED TO ORDER AT 5:00 PM.

I. ROLL CALL

II. MINUTES APPROVAL

- II.A. Consideration to Approve the Planning Commission Meeting Minutes from June 25, 2019.
[June 25, 2019 Minutes Pending Approval](#)

III. PUBLIC COMMUNICATIONS

IV. STAFF AND BOARD COMMUNICATIONS AND DISCLOSURES

V. REGULAR AGENDA

- V.A. 1330 Empire Avenue, 1302 Norfolk Avenue, 1361 Woodside Avenue, and 1323 Woodside Avenue – Approval of Written Decision for the Appeal of Planning Commission’s Approval of the Master Planned Development Application.
(A) Action
[Staff Report](#)

VI. ADJOURN

A majority of City Council members may meet socially after the meeting. If so, the location will be announced by the Mayor. City business will not be conducted. Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the City Recorder at 435-615-5007 at least 24 hours prior to the meeting. Wireless internet service is available in the Marsac Building on Wednesdays and Thursdays from 4:00 p.m. to 9:00 p.m. Posted: See: www.parkcity.org

***Parking validations will be provided for Council meeting attendees that park in the China Bridge parking structure.**

PARK CITY MUNICIPAL CORPORATION
BOARD OF ADJUSTMENT
MINUTES OF JUNE 26, 2019

BOARD MEMBERS IN ATTENDANCE: Ruth Gezelius – Chair; Jennifer Franklin, Hans Fuegi, Stefanie Wilson (Alternate)

EX OFFICIO: Planning Director Bruce Erickson, Hannah Tyler, Planner; Jody Burnett; Laura Kuhrmeyer; Jessica Nelson

ROLL CALL

Chair Gezelius called the meeting to order at 5:00 p.m. and noted that all Board Members were present except for Mary Wintzer and David Robinson, who were excused. Board Alternate Stephanie Wilson was present and the Board had a quorum to proceed.

ADOPTION OF MINUTES

November 11, 2018

Stefanie Wilson noted that her first name was spelled incorrectly in the Minutes. The correct spelling is S-t-e-f-a-n-i-e.

MOTION: Jennifer Franklin moved to APPROVE the Minutes of November 20, 2018 as corrected. Board Member Wilson seconded the motion.

VOTE: The motion passed. Hans Fuegi abstained from the vote since he was not present for the November 20th meeting.

PUBLIC COMMUNICATIONS

There were no comments.

STAFF/BOARD MEMBERS COMMUNICATIONS AND DISCLOSURES

Director Erickson announced that the BOA needed to have the annual Open Public Meetings Act and the GRAMA Training. He did not anticipate a Board of Adjustment meeting in July but a meeting may be scheduled in August for training. The meeting would be the third Tuesday in August; however, the date could be flexible to meet the Board members' schedules.

Chair Gezelius asked Director Erickson to notify the Board Members who were absent this evening about the August meeting.

Regarding the appeal item on the agenda this evening, Jody Burnett, Outside Legal Counsel, assumed the Board members were familiar with the relevant provisions of the Code. He explained that the BOA would be acting in a quasi-judicial capacity in hearing the Appeal of a Planning Commission decision. Based on their quasi-judicial role, no Board member should have had any ex parte communications with anyone regarding this application. Mr. Burnett stated the Board Members needed to disclose any communication if that occurred. A Board member should also disclose anything that might represent a potential conflict in hearing this appeal.

REGULAR MEETING – Discussion, Public Hearing and Possible Action

1330 Empire Avenue, 1302 Norfolk Avenue, 1361 Woodside Avenue, and 1323 Woodside Avenue - Appeal of a Land Use Determination – The appellant is appealing the May 22, 2019 Planning Commission approval of the Master Planned Development application for the 58- unit Master Planned Development located at 1330 Empire Avenue, 1302 Norfolk Avenue, 1361 Woodside Avenue, and 1323 Woodside Avenue in the Recreation Commercial (RC) Zoning District. 52 units of the 58 units will be deed restricted Affordable Housing units. (Application PL-19-04241)

Planner Hannah Tyler provided an overview of the project and outlined the process. She stated that this item was an Appeal of the Woodside Park Phase II Master Planned Development application. The City is the applicant.

Planner Tyler noted that the MPD application was reviewed and approved by the Planning Commission on May 22, 2019. The Appellant submitted their appeal within ten days of that final action.

Planner Tyler reported that the Appellant referenced four different appeal points. The Staff provided their own analysis of those four points, which was included in the Staff report. Planner Tyler was prepared to answer any questions specific to the Staff report.

Planner Tyler stated that the Appellant would start with a presentation; and the Applicant would have the opportunity to follow up with their presentation. Planner Tyler reiterated that the City is the Applicant, represented by the Project Architect and the Community Development Director.

Planner Tyler stated that this item was noticed for public hearing. The Staff had included a proposed Order to Deny the Appeal in the Staff report; along with supportive Findings of Fact, Conclusions of Law, and Conditions of Approval. The Staff report also outlined a list of alternatives that the Board may select as options besides denying the application.

Chair Gezelius stated that because this was a complicated matter, she thought it would be appropriate to discuss the other options before the Board. She preferred to have that discussion prior to the presentations. Chair Gezelius noted that the options were outlined on page 34 of the Staff report.

Planner Tyler reviewed the options. The first option is to deny the appeal. The second option would be to grant the appeal, which would reverse the Planning Commission decision. The third is that the BOA may affirm in part and reverse in part. The Board could approve part of the appeal and deny the other part. A fourth option is to remand the application back to the Planning Commission to look at specific items. The last option is to Continue the appeal and request additional information.

Chair Gezelius asked Planner Tyler to review the options for the Applicant in the event this Appeal is denied. Planner Tyler stated that if the Appeal is denied based on the proposed Order to deny the application, the Appellant may appeal to a District Court. It will not be appealed to another body within the City.

Nicole Deforge stated that she is an attorney with Fabian Van Cott and she was representing the Appellant, Doug Lee. Ms. Deforge remarked that Mr. Lee is a long-time Park City homeowner. His family has owned the home on Empire Avenue immediately adjacent to this Woodside project for over 40 years. Ms. Deforge intended to speak on behalf of Mr. Lee initially; and Mr. Lee would also add his own comments.

Ms. Deforge stated that Mr. Lee understands and strongly supports the need for affordable housing in the City and in his neighborhood. She clarified that this was not a not-in-my-backyard situation. Mr. Lee had genuine concerns about this project in that it is being allowed to circumvent the mandatory setback, open space, parking and historic district design review requirement, despite the fact that it does not meet the clear conditions for invoking those exceptions. Mr. Deforge stated that this already very large and impactful development will be more seriously and negatively impactful to the surrounding neighbors in the surrounding historic neighborhood.

Ms. Deforge stated that because the City wants this project, the end result of approving the project appeared to be a foregone conclusion. The setback, open space, and historic design review exceptions were deemed necessary to the project. However, after the Planning Commission voiced support for the project, Findings were hobbled together in an attempt to justify the conclusions the Commissioners wanted to reach. Ms. Deforge remarked that those findings do not ultimately support the legal conclusions and do not meet the requirements of the governing ordinances.

Ms. Deforge stated that as the Board considers this appeal and how the setback, open space, and other requirements have been excused, she asked the Board

members to imagine if they lived adjacent to this development how they would be impacted by the relaxation of these legal requirements.

Ms. Deforge stated that the first issue was open space. She noted that open space is one of the top priorities of the City. This project is required to have 60% open space under the City ordinances, but it only provided 44% open space. Ms. Deforge remarked that the reduced amount is only legally permissible if two factors are met. One is that it must constitute a redevelopment of existing development. Second is that project enhancements must be given.

Ms. Deforge stated that the Planning Staff leapfrogged over the first requirement before the Planning Commission and decided that the open space reduction was warranted due to project enhancements. Ms. Deforge remarked that the Planning Commission attempted to clean up that by inserting additional findings at the last minute. For example, Finding #32 in the Planning Commission report states that the project is a “redevelopment because several old structures had been demolished or moved on a couple of the lots 10 to 20 years ago. Ms. Deforge pointed out that this project is comprised of many lots and in the end there would still be three separate lots. Two of those lots have no existing development currently. Ms. Deforge remarked that the exception in the ordinance for this setback reduction applies not just to a redevelopment, but to a redevelopment of an existing development. She stated that no finding was made before the Planning Commission that all of these lots had existing development. In fact, a Finding by the Planning Commission that there was no current development on these lots conclusively establishes otherwise. Ms. Deforge stated that without Findings that these lots have existing development on these properties, the project does not meet the plain language of the ordinance, and it is not entitled to the open space exception.

Ms. Deforge commented on the setback issue. She stated that the minimum setbacks for this project under the Park City ordinances are 25-feet around the entire perimeter; however, none of the setbacks for this project would 25-feet. Instead, the setbacks will vary from just 5-feet in some parts to 20-feet at most. Ms. Deforge pointed out that this exception was only legally permissible if the Planning Commission legitimately found that the setback reduction was warranted under the Code. She noted that per the Code for a setback reduction, it must be “necessary to provide desired architectural interest and variation”. Ms. Deforge stated that none of the Findings claim, much less show, that setback reductions were necessary to provide architectural interest and variation. Most of the Findings as to the benefits of this project were not relevant to architectural interest or variation. Mr. Deforge thought the findings appeared to be manufactured after the fact to attempt to justify the foregone conclusion that the City wants this project and they need setback exceptions to achieve it.

Mr. Deforge stated that one excuse given for the setback reduction is that it would align the project with some of the other structures along the streetscape.

She did not believe a setback exception was necessary because the project could easily be setback another 5-feet without sacrificing any architectural interest, and it would actually provide greater architectural variety. Even if it is necessary for front setbacks, it does not justify side or rear setbacks. Ms. Deforge stated that there is no attempt to explain in the Planning Commission Findings why side setback reductions are necessary; and the justification for the rear setback reduction of 5-feet is solely due to the existence of a utility easement. Ms. Deforge did not think that was an arguable basis for a setback reduction under the ordinance that provides for a reduction only if it is necessary to provide desired architectural interest and variation.

Ms. Deforge stated that even if any of these reasons would result in architectural interest or variety, that is not the legal standard. The setback reductions must be necessary for the desired architectural interest or variety. It should not be just simply a possible result. A project that incorporates architectural interest and variety in any way does not warrant a setback reduction because the exception must be necessary in order to achieve it. Ms. Deforge argued that this was not the case in this situation and not a single Finding at the Planning Commission level states that it is.

Ms. Deforge stated that if the Staff report and the analysis that the Board of Adjustment received on this appeal adds any new Findings to the Planning Commission report, those findings cannot be considered at the BOA level. The Board of Adjustment is bound to what the Planning Commission did and what the Planning Commission found; and they did not make the necessary Findings to invoke this exception to the setback requirement.

Ms. Deforge commented on the Historic Design Review. She believed there was no question that this project would fail Historic Design Review if it was required to go through that process. Instead the City decided that Historic Design Review is not required because the historic home itself is not being worked on as part of this project. She stated that everything else on the site was being changed without touching the existing historic house to avoid triggering the Historic Design Review process. Ms. Deforge remarked that the Planning Commission's conclusion that the Historic Design Review is not triggered unless and until something is done to the historic structure itself is completely unsupported by the language in the law; and it is inconsistent with the relevant provisions for all the reasons explained in the Notice of Appeal. Ms. Deforge emphasized that this project requires Historic Design Review and it is has not gone through that process.

Ms. Deforge commented on parking. She disagreed that the affordable housing MPD ordinances do not apply, as explained in their Notice of Appeal. It is an affordable housing MPD and nothing in those ordinances state that the 100% affordable housing requirement is required to trigger this ordinance. Under the Affordable Housing MPD Ordinances, the project must have one parking space

per bedroom. There is no dispute that this project does not remotely satisfy that requirements.

Ms. Deforge asked the Board of Adjustment to do its legal duty to construe the relevant ordinances according to their plain language. It should not be according to what they think the ordinances should say, what the City intended them to say, or what they think would be most beneficial to this project. Ms. Deforge urged the Board to take an honest look at this development and see if the requested exceptions to setbacks, open space, and the other issues honestly and legitimately apply here; or if the after-the-fact Findings that were hastily cobbled together to justify the end result actually pass muster. Ms. Deforge noted that Commissioner Suesser did not think so at the Planning Commission level and voted against the project. She believed Commissioner Suesser was absolutely correct. This project does not comply and it must be denied until it does.

The Appellant, Doug Lee, stated that he was representing his family, the owners of 1356 Empire. Mr. Lee stated that their house is immediately to north of this project. His family has owned this house since the early 1980s when he was a senior in High School. He remembered visiting Park City for the first time back then. Mr. Lee remarked that the City and the traffic have grown exponentially since those days. Mr. Lee stated that he has a degree in architecture from UC Berkeley, and he originally specialized in designing additions to historic districts. He believed his experience gives him great insight into the disputed planning issues surrounding the Woodside II Development. Mr. Lee stated that he currently runs a commercial real estate investment company.

Mr. Lee stated that Ms. Deforge summarized their legal arguments and planning concerns; however, he wanted to give his perspective as an architect and an investor, and also touch on the impacts the proposed development will have on the quality of life and life safety in the neighborhood.

Mr. Lee stated that the planning team behind Woodside has asked for certain exceptions to the LMC for less open space, smaller setbacks, and the relaxation of the Historic Preservation Guidelines. As an architect, he knows that these exceptions enable the City to build more on the site in closer proximity to the neighbors than should be allowed. He found it insulting to the architectural profession for the City to claim that the setback reductions are necessary to provide architectural interest and variation when there is no basis for that claim. Mr. Lee stated that there are infinite number of ways to provide architectural interest and variation, and none of them need the City to obliterate the minimum setback requirements as required in the LMC.

Mr. Lee noted that the City claims the 20-foot setback on Empire is consistent with the neighborhood. He stated that if anyone has walked the neighborhood and measured the setbacks they would know that very few of the neighbors are set back only 20-feet. Only three neighboring cottages to the south have a 20-

foot setback. All the other houses from his house north are set back more than 20 feet. Mr. Lee remarked that comparing the facades on Empire to the proposed façade design in Woodside II, it is evident that the neighbors have more interest and variation than the proposed project. He suggested that the architects and planners look at that and make changes to the Empire facades accordingly.

Mr. Lee stated that the precedent created by the City's disregard for open space and historic preservation requirements will be welcomed news for the investors and developers in the area. Mr. Lee thought there was something paradoxical and hypocritical about a city that recently spent \$64 million to preserve open space on Treasure Hill, but is maximizing the building density in its signature affordable housing project. Mr. Lee remarked that based on their public comments, the Mayor and the City Council are focused on the quality of life for residents and the motto Love Where You Live. If that is the case, projects like Woodside should be held to a higher standard and should improve the built environment for all its stakeholders and neighbors; not just the project residents. For that reason, Mr. Lee finds it objectionable to hear the Staff and applicant arguing for these exceptions to the open space setback and preservation requirements.

With regards to life safety, Mr. Lee stated that traffic on Empire has reached dangerous levels on the best of days and even worse on snow or event days. Given the additional pedestrian and automobile traffic generated by the project, Mr. Lee requested a more comprehensive traffic study for Empire, Norfolk, Woodside, and Park Avenue. Those streets are already overburdened. He thought the traffic study included in the Staff report was insufficient as it only studied a five-day non-holiday period in February when there was no snowfall. He has witnessed too many near misses on Empire during the ski season when families walking to the Resort Center are forced to walk in the street bed due to lack of snow storage and sidewalks, which adds to congestion and life-safety risks. Mr. Lee stated that during the week of February 16th he witnessed an ambulance being unable to reach the Resort Center due to standstill traffic on Empire. Mr. Lee stated that his point is the need for more careful study of the problems and solutions for the traffic on Empire before new development is approved for the site; especially with the increased foot traffic to be created by the large public stairway, which is part of the project.

Mr. Lee urged the Board to reject the currently proposed project in order for the project to be redesigned to satisfy the MPD requirements without any exceptions, and to create a project that is responsive to the life safety concerns.

Jarrett Moe, represented Methods Studio Architects, the project architect. Mr. Moe provided an overview of the project and highlighted the key points. He also addressed some of the points raised by the Appellant.

Mr. Moe stated that they approached the project by examining the existing neighborhood context. The process begins by trying to achieve a harmonious approach with the existing urban fabric. Mr. Moe presented slides showing how the design of Woodside Phase II was approached harmoniously with Woodside Phase I, as one single entity to create a positive impact on the neighborhood. Mr. Moe noted that this was a product of a ten-year public input and planning process. They were careful to design projects that create a more livable environment, particularly for the year-round residents.

Mr. Moe presented slides of Woodside Phase I and Phase II as seen from various views. He stated that Methods Studio began the design process by asking how they could create a more livable neighborhood for the full-time residents. Part of that approach comes from breaking down the existing massing, putting doors on the street, and creating a presence on Woodside that currently does not exist. Mr. Moe indicated a series of six three-bedroom townhomes along Woodside Avenue, punctuated by a pedestrian corridor connector all the way up to Empire Avenue. He pointed to stacked-flat apartments in the center of the lot, which is split by a pedestrian plaza and public access way. There are four one-bedroom units off of Norfolk Avenue. Three-bedroom townhomes at the top of Empire Avenue will sell at market rate.

Mr. Moe stated that as they continue to look at the unit mix, they promote walkability, alternative modes of transportation, and secured bike storage on the plaza level to interact with pedestrians. They created more livable design through access to daylight and natural ventilation. The parking is pushed underground with one-way ingress and egress at the north side and the south side of the project, removing it from the pedestrian access way in the center. The intent is to separate vehicles from pedestrians.

Mr. Moe commented on the open space. He stated that if the project was deemed a redevelopment based on the existing structures which are currently present on the site, as well as the past structures outlined in the Staff report, which include the fire station, the senior center, and various residential developments that were contained on the site the last few years.

Mr. Moe stated that in looking at open space with regards to project enhancements, the project was designed to be under the allowed density. The scheme is compatible site design and massing strategies to the existing neighborhood. Woodside townhomes were placed to create a presence by allowing doors and porches to access that avenue and create a more livable streetscape. Mr. Moe remarked that parking was removed from view and out of the pedestrian interference. Parking is discouraged by not being visible on the project. Another benefit was enhancing the public pedestrian connector from Woodside Phase I all the way to Park Avenue, extending up to Empire Avenue.

Mr. Moe stated that 52 deed restricted properties were being provided, which fulfills a much needed affordable housing need in the City. Also provided is public access and easement providing a mid-block view corridor, as well as amenities up to the Resort Center. A common plaza is integrated into the design where they will feature public art. Excess bike parking will also be provided at this level. There is also an additional easement from the Plaza to Norfolk Avenue via the west side.

Mr. Moe commented on the net zero design. He noted that they were trying to enhance the built environment by providing a design that uses less energy than it produces. They studied several different ways to achieve that and Mr. Moe believed they had come up with a very appropriate approach and an enhanced project amenity that could be an example for the community going forward.

Regarding the setbacks, Mr. Moe stated that the setbacks are consistent with the RC zone and are required to provide the architectural interest inherent in the design. Mr. Moe remarked that it is not possible to squeezed down the project and still create the variability in the massing and the site lines; especially given the existing topography of the site where it varies from over 40' from Woodside Avenue up to Empire Avenue. Mr. Moe stated that without the required setback reduction, the shape, size, and proportion of the lot does not lend itself to any other design besides the solid block massing centered in the middle of the development. Therefore, street presence is eliminated and the mid-block pedestrian connector and view corridors are eliminated. The potential for architectural interest and variation are limited by the reduction of six distinct massings down to one. Mr. Moe remarked that inherently one single massing has less architectural variation by definition. He noted that in considering snow storage and accessibility, any other setback is not an option as the project is designed.

Mr. Moe stated that these considerations are not an after-the-fact justification. They are inherent to the early design process as professionals practicing architecture at Method Studio.

Mr. Moe stated that in regards to the HDDR, it was concluded that because no work was being proposed on the historic structure the Historic District Design Review is not necessary.

Mr. Moe stated that the site improvements within the 1302 Norfolk Avenue boundary have been assessed by the Planning Staff. The project proposes a shared driveway in the rear of the structure, which is encouraged by the LMC.

Mr. Moe commented on the MPD. Since they were not looking to utilize the bonus density or to increase the heights, as well as not qualifying with the unit mix being under 100% affordable, they determined the only appropriate way forward was the standard MPD, and that is what they pursued.

Community Development Director, Anne Laurent, stated that she was representing the Housing Staff who was the lead on this project for the City. As the applicant, she wanted the opportunity to provide additional background on this project. Ms. Laurent pointed out that there is a long history of this project being talked about as a project for the community with the community. It will provide clarity on the history of the site, affordable housing, and the public input that was taken in, and the overall community wide goals of the projects they have been striving to achieve.

Ms. Laurent stated that the Lower Park Avenue Redevelopment Area was created in 1990 and extended into 2012. The purpose was to maximize opportunities for economic development and/or affordable housing. That has been continuing with the goal for affordable housing projects. She stated that as part of this process several design options were held and community feedback was gathered, which led to the report presented in October 31, 2009. As part of that report, the project had been identified as a redevelopment project. Ms. Laurent read from the report "...significant potential for redevelopment that furthers multiple goals of the RDA vision exists along two corridors along the east/west access. The first would connect Park City Mountain Resort and Lowell Avenue to Park Avenue and the Old Miners Hospital in the vicinity of the decommissioned Park Avenue Fire Station. Ms. Laurent stated that this was consistent with what was carried forward with the Woodside Phase I and Phase II projects. They started with single-family home historic preservation with the buildings on Park Avenue. The intention was to work within the existing zoning for height limitations and density. She noted that none of what was proposed on the City projects have exceeded the base zoning allowed density or the allowed heights. None of those were afforded even though there were opportunities to request it because this is a City project and it was not what the community wanted. They pushed forward with maintaining the connection and the public amenities, and vetting that into the project.

Ms. Laurent stated that it was important that the RDA goals were incorporated into the design of the project. She thought it was important to note that they were applying for this like any other development and following all the rules required of any other developer. Ms. Laurent believed the City was providing and doing additional things a developer would not do because the applicant is the City and the City is financially subsidizing the project to make it possible.

Ms. Laurent remarked that there would be 16 new units of affordable/attainable units in this area of town that has been taken over by second homes and nightly rentals. It will bring back more year-around residents to the community. The goal is to reseed this neighborhood with vibrancy for all parts of the year.

Ms. Laurent wanted the Board to know that the City Staff has worked with the community and they heard the community. As the applicant, they completely

concur with the Planning Department conclusions that this project is within the density and the height restrictions. Mr. Laurent stated that where look to tweak this project is to make it as compatible as possible with the neighborhood and to give back with the public benefits.

Planner Tyler had nothing further to add and she was available to answer specific questions.

Chair Gezelius opened the public hearing.

Ed Parigian, a resident on Norfolk Avenue, believed the Architect had taken serious liberties with the setback rules. Mr. Parigian stated that normally there is a setback and a driveway goes through it; however, through sleight of hand, this Architect was using side setbacks for driveways. Mr. Parigian explained that normally there would be a house and a setback of 20' and the driveway can go through it. In this situation, they have taken the liberty of putting the driveway along it on Empire next to Mr. Lee's house. Mr. Parigian stated that at 1302 Norfolk the driveway is placed 5' into the lot line. The setback on the historic home is supposed to be 5' but instead it is driveway. The setback on the four flats behind it is 10' and instead that is driveway. Mr. Parigian remarked that basically there is a driveway going along all the setbacks. He thought it might technically be legal, but it is a judicious use of the legal system. Mr. Parigian believed everyone knew this project could be designed differently. He agreed the benefits of affordable housing. He thought the five market rate units on the top should also be affordable housing.

Mr. Parigian reiterated that this Architect was taking serious liberties with the Land Management Code. He thanked the Board for their time and expressed appreciation for all they do.

Malia Brown stated that she is a property owner and full-time resident at 1259 Norfolk. She found the vibrancy and seeding comment very interesting for this particular area of Park City. She lives there and she has a ring doorbell. If anyone wants to talk about vibrancy of what occurs in that particular quadrant of the community she would be happy to show them hours of footage. As a community, Ms. Brown they did a great job setting aside the City Park. People use the park all day long. There are many full-time residents on Norfolk Avenue, Empire, and Park Avenue. She thought it was a misnomer to think that adding the affordable units is actually seeding the neighborhood with more vibrancy. She strongly disagreed with that argument considering that this appeal is based on an exploitation of the Code.

Ms. Brown thought it was clear that there is plain language in the Code that is being violated based on the affordable unit conversation. If they decide to zone and plat for affordable units, they have to go under the affordable Code. She did not believe that one car per bedroom was too much to ask because it is part of

the Code. A car per bedroom is nothing to ask in Old Town, which the City already does. It may not always be a car per bedroom on every residential unit, but they make sure it is 1.5 cars per unit and in some cases 3 cars per unit. In some cases, that is even exceeded depending on the square footage of the property. Ms. Brown encouraged the BOA to go back and look at how the parking is being managed in this project. She emphasized that this actual part of the community has no additional parking, and there are no sidewalks. Six years ago the City put in sidewalks on Norfolk, but they only go a tenth of the way up 12th to 13th Street. She encouraged the Board members to look back there. It is the back side of the Park, which is where she lives. Those sidewalks do not carry up the rest of Norfolk. Ms. Brown stated that there are many sidewalks in the community and many staircases set up for public use. She thought the additional staircase proposed was a good idea, but it puts an extra load on safety on Norfolk and on Empire. It also puts a load on safety on the street above.

Ms. Brown stated that when she spoke at the Planning Commission meeting she took pictures to show what happens when people are walking towards the ski resort. It is a substantial problem. She thought it was important to not only look at the traffic study for cars, but also the pedestrian use. She understands this is still in development, but pedestrians should be factored in for this large of a project.

Ms. Brown encouraged the Board to relook at the parking consideration for this particular project, and how it applies to the Code and to the neighborhood. At any time, every parking space for the Library is taken and every parking space for the side of the library is full. Public spaces along Norfolk are all taken in that neighborhood. Ms. Brown reiterated that there is plenty of vibrancy in the neighborhood and people come and go all day long.

Mr. Brown remarked that the community has been rallying for open space. They cannot speak for the people who will be buying these properties and she believed the future residents will want as much public space as anyone else. Ms. Brown encouraged the Board to visit the homeowners on Park Avenue whose children literally have to play in their driveway because there is no other space. Ms. Brown thought they should offer the people who will be living in this project an opportunity to live there without worrying about being hit by a car walking down Empire to Norfolk.

Ms. Brown commented on side yard setbacks. As a property owner and having built many properties in Park City since the late 1960's, the rules for setbacks were always respected.

Mr. Brown supports affordable housing and she knows firsthand that many of the constructed affordable housing projects are not buildings that are not lendable. The BOA has the ability to stop that practice and to look at something from a bigger and wider perspective of what can be done better for the community, for

the future residents of this housing project, and for all the people who are constituents of this particular parcel. The majority of the community understands the need for affordable housing, but the density in this project does not create greater benefit for the whole. She thought the Applicant needed to relook at the density to see if it could be reduced, particularly behind the historic home, to see if the proposed density creates more problems than it solves. There is an opportunity to change the platting and she thought that should be considered. Ms. Brown thanked the Board members for their times this evening.

Chair Gezelius closed the public hearing.

Ms. Deforge responded to comments made by the Architect and the Applicant's representatives. She recognized that their goals were laudable and there are many nice features of this project. However, none of that is relevant to the appeal this evening. The purpose this evening should not be to weigh the benefit and the costs and the goals versus the impacts. The purpose this evening is to evaluate the legal issues, which is whether or not the setback requirements, the open space requirements, the parking requirements, and the HDDR requirements are met. In evaluating that, the testimony given by the Architect and the Applicant this evening is not part of the analysis or the appeal.

The appeal is based on the May 23rd Planning Commission Notice of Action and the Findings in that documents. The question is whether the Findings in that document made by the Planning Commission support application of these exceptions in this particular case. The question is not whether the Architect deemed these to be met, or whether the Architect and the Staff determined that this was the best way to do it. It is about what the Planning Commission decided and whether the Findings for their decision actually support the requirements; and whether it is necessary to give setback reductions in order to provide desired architectural interest and variety. Nothing else is relevant. Ms. Deforge encouraged the BOA to focus only on the issues outlined in this Appeal.

Ms. Deforge commented on Mr. Lee's statement regarding the open space. She stated that she represented THINC, the community group that opposed the Treasure Hill development for many years. THINC members spent many months attending meetings to hold the applicant's feet to the fire in terms of meeting the Code requirements and pointing out where the project violated those requirements. THINC worked with the City to make sure the applicant complied in every respect and met the requirements of the Code. Ms. Deforge noted that she and THINC worked with the City to figure out a good solution, and they were thrilled with the outcome to purchase that property as open space for the community.

Ms. Deforge echoed Mr. Lee's comments about the disappointment in having to oppose a City development, in part because it does not comply with the open space requirements. Based on the comments heard this evening and the

Findings that were made by the Planning Commission, Mr. Deforge did not believe there was a legal basis for the exception to reduce open space. There was also no legal basis for the other requested exceptions and reductions. As a City project this needed to comply with the Code without having to make Findings that sound like the exceptions apply when in fact they do not. Ms. Deforge thought the City should be the example of how to do a development in Park City; and they should do it by respecting the Code requirements and the adjacent neighbors. She encouraged the City to do this project in a way that is good for everyone and gives more than lip service to the City's desire for open space, historic preservation, and livable neighborhoods.

Ms. Deforge encouraged the BOA to deny this application and send it back to be redesigned so it does comply and respects the neighbors.

Mr. Lee noted that the Ms. Laurent said that they heard the input from the community and it was reflected in the design. He stated that beginning in January two dozen residents have commented on density and scale, and there have been absolutely no changes reflecting their comments since January. He found the Ms. Laurent's comments to be disingenuous.

Mr. Lee stated that another comment made was that if they did not have all the latitude with setbacks, they would be forced to go from six buildings to one solid massive building. He found that to also be completely disingenuous. He believed they could find an Architect who could figure out how to put massing on the site without putting it in one building.

Community Development Director Laurent highlighted a few items in the Staff report. The first is that the project is compliant with the parking requirements. Those who said otherwise are speaking about a section of the Code that does not apply to this development. That section of the Code comes with other benefits that this project did not seek or was afforded. Ms. Laurent wanted it clear that this project is completely compliant with the parking section of the Code.

Mr. Moe pointed out that this project actually exceeds the parking required by Code. Ms. Laurent agreed. Visitor spaces push the parking count beyond the requirement.

Ms. Laurent clarified that they were not requesting a rezone. She thought some of the comments alluded to the use and that the zoning was being changed. She emphasized that the current zone allows for this use and the project is within the allowed density of the zone. What has been amended through the process is what the Code envisions is allowed to be amended through the process to make it a better project and more compatible with the community. That was done and the Planning Commission agreed with it.

Chair Gezelius stated that this was a complicated packet in terms of information and detail. When confronted with so many conflicting ideas and interpretation, it is often difficult to see the big picture and make a quick clear decision. She thought the many differences of opinion of both the Appellant and the Applicant, and the process this went through with the Planning Commission, would indicate that the BOA needed to look at the big picture and focus exactly on the four points of appeal. The Board should not look at the value judgment attached with any of the personal feelings about this matter.

Chair Gezelius asked for Board comments and discussion on the appeal and the alternatives for action that were outlined in the Staff report.

Board Member Franklin thanked everyone for their diligence and time. It is a thorough packet and the arguments and presentation were very thorough. Ms. Franklin stated that it is challenging for the Board to look at this anew, as they were being asked to do. She was the least concerned with the parking. She lives in a property in Old Town and if people visit her they get there by foot, bicycle, or public transit. Ms. Franklin believed the parking fit within the Code requirements of the LMC.

Board Member Franklin had more challenge with Item 2 of the Appeal regarding setbacks. She thought the City had done a nice job with the two pieces that were deconstructed and reconstructed on the property along Park Avenue. She was still struggling with the setback issue.

Board Member Franklin stated that open space was also a concern but not as much as other issues.

Chair Gezelius clarified that Board Member Franklin had concerns with three of the four issues in the Appeal. Ms. Franklin answered yes.

Board Member Fuegi agreed these were four complex issues. He understood that the open space was a redevelopment because of older buildings on some of the parcels versus all new development. He was unsure of the legal implication, but he understood what Planner Tyler had written in the Staff report and the arguments by the Appellant. Mr. Fuegi stated that he was very torn over the open space issues.

Regarding the setbacks, Board Member Fuegi agreed with the Appellant that there must be a way to better respect the setbacks. The utility easement made sense as the best solution. However, he struggled with the claim that reduced setbacks are necessary to provide desired architectural interest and variation. He believed there are many other ways to provide architectural interest and variation.

Board Member Fuegi stated that the Historic District Design Review committee are the experts, but he thought it would be a logical step if it is unclear whether the requirement applies.

Board Member Fuegi returned to the open space issue. He agreed with the Staff determination that it is a redevelopment. He was still struggling with the other three issues and he was not convinced that he could support the City's application.

Board Member Fuegi was at the Planning Commission meeting on another matter when the Commissioners discussed and voted on this project; at which time the City Attorney was asked for his interpretation of Section 15-6-5 versus 15-6-7. It is called an affordable housing development and there is a place in the Code for that specifically. Mr. Fuegi understood that one of the reasons the affordable housing section of the Code was not being applied was due to the market rate units. Mr. Fuegi asked Mr. Burnett for his legal opinion.

Mr. Burnett stated that although the Board's review of factual matters is de Novo, which means they could consider additional information presented this evening, the burden is on the Appellant to show that the Planning Commission erred. He noted that Ms. Deforge was arguing that the Planning Commission made a mistake because they either did not have adequate factual Findings to support their conclusions; or they interpreted the Code incorrectly. The Board should look at whether they would make the same decision as the Planning Commission or whether they would have reached a different conclusion.

With respect to the affordable housing issue, which relates directly to parking, Mr. Burnett believed there was a difference in the Code between an MPD that happens to contain affordable housing versus an affordable housing project. He thought the key distinction was not only that it was not 100% affordable, but also that the applicant was not asking for bonus densities. The density is actually at or below what is allowed under the existing zoning. Mr. Burnett stated that to the extent that that provision of the Code could be susceptible in either interpretation, they were in an ironic position because all zoning regulations are in derogation of property rights. If there is a close call, the tie goes to the Applicant. In this case, the City is the applicant; not the Appellant. Mr. Burnett stated that the fact that it might be susceptible to more than one interpretation goes to the Applicant's benefit. However, there was no suggestion that it could not go the other way.

Board Member Wilson commented on Item 1. She asked if there was already infrastructure and sewer and water connections to all the separate parcels in the Woodside development. Ms. Wilson clarified that she was trying to determine whether or not the parcels were developed.

Mr. Moe stated that there is water, sewer, and power on all of the lots, with the exception of Empire. He noted that there is some discrepancy as to what exists on Empire. He did not think there was a sewer connection on Empire.

Chair Gezelius asked if those were individual parcels or whether there were City utilities in the street. Mr. Moe believed the lots off Woodside and Norfolk have private laterals and water connections.

Board Member Wilson thought the utilities speak to whether or not it is developed. If there are no utility hook-ups to the site, that would indicate raw land.

Board Member Wilson commented on Item 2. She shared the Board's concerns about the setbacks. She wanted to know how many different designs were considered that were possibly within the setbacks and whether those designs were considered and scrapped for whatever reason. Ms. Wilson questioned whether the reason for the setback reduction was to reduce density or if it was necessary for architectural interest and variation. She found the setbacks to be a concern.

Board Member Wilson agreed with Board Member Fuegi on Historic Design Review. If there is an argument or dispute, it would be better to go through the HDDR process.

Mr. Burnett pointed out that Historic Design Review is only done on building design. It does not apply to what was approved. Mr. Burnett stated that the BOA has the purview to remand back to the Planning Commission, but the remand must be based on whether they believe the Planning Commission made an error either in their Code interpretation or in adequate factual Findings.

Board Member Fuegi understood that the BOA could request that this portion of the development, once the design is implemented, could be reviewed by the Historic District Design Review team. Mr. Burnett replied that the Code either applies or not.

Planner Tyler clarified the Historic Design Review process. Mr. Burnett was correct that the process has not yet been triggered. However, based on the current scope of work, the Historic Preservation Board would not be triggered by this application. The best case scenario is that it would be a pre-application, which is an administrative review. Planner Tyler emphasized that because the historic structure has not been touched, the material deconstruction review has not been triggered. She wanted the Board to understand that this would not go in front of the HPB. If they have the purview to direct the applicant to go through the pre-application process. It would be a Staff level review.

Board Member Franklin wanted to know if the Board could ask why 1302 was not included in this MPD.

Community Development Director Laurent stated that originally when they started this project the City did not own that property; and it was the same in January. They were already deep into the design process by then. They were at the point of submitting the applications and being under review with the Planning Department. Ms. Laurent remarked that it helped avail some additional public access, as well as make that side of the project work better. She explained that the City acquired 1302 late in the process and they did not have a plan for that building.

City Attorney Mark Harrington clarified that that property was subject to an appeal for historic demolition, and the City acquired it to prevent the demolition. That also allowed the site contributions that Ms. Laurent referred to, to occur after that effect. Mr. Harrington emphasized that the property was acquired separately to prevent that demolition. It had nothing to do with this project other than the enhanced planning that it presented after the fact.

Mr. Lee wanted to know when the City closed on the property. Mr. Harrington did not have the exact date. Mr. Lee thought it was important to know whether the City had owned it long enough to be incorporated into the project. Mr. Harrington stated that some side yard elements were incorporated into the project and those were described.

Mr. Harrington clarified that he was only explaining that the City acquired the property to stop the demolition.

Chair Gezelius thought the Planning Commission's approval of this project was questionable. She found many rules, regulations, and interpretations to be subjective. Chair Gezelius was having a difficult time understanding how the decision was made to approve this project with so many question marks. She stated that one of things about developing in the Historic district and in the heart of Old Town is if they all follow the rules they live together in better harmony. Chair Gezelius remarked that development should be compatible in the Historic District and with the supporting resort business; and they needed to keep that big picture in mind.

Chair Gezelius found that the four points raised by the Appellant were significant. The significance is so great that she felt the Planning Commission's decision had serious flaws. Chair Gezelius thought the project should be remanded back to the Planning Commission. She believed there is always conflict when they try to do things in-house in terms of development. Chair Gezelius did not think this project was ready for a decision in its current configuration and current approval. She thought it would be a grievous error to allow this project to move forward at this stage.

Mr. Burnett stated that the Board had that as one of their prerogatives. The Board has the final decision over whether the Planning Commission decision was good enough or not. If the Board intends to remand it back to the Planning Commission they need to be very specific on where the Commissioners erred and what they want the Planning Commission to do to fix it. The Board would need to make a finding that the Planning Commission erred by either incorrect interpretation of the Code or the lack of adequate evidence in the record to support one of the Findings that were made. Mr. Burnett stated that the Board should be prepared to give specific direction to the Staff to prepare Findings and Conclusions that are very specific so the Planning Commission would know what they need to look at and consider differently.

Chair Gezelius shared the comments made by the other Board members on the four points. She stated that open space needs to be adequate for people to have decent living conditions. The Library open space and the Park cannot accommodate hundreds more people because those spaces are already full.

Regarding the setbacks, Chair Gezelius stated that the City is stringent to Old Town developers and homeowners in terms of locating the driveway and how far the building comes to the property line. The setbacks insure some degree of livability in Old Town and the approval for setbacks does not meet that intent.

Chair Gezelius understood there was interpretation regarding meeting the parking code; in her opinion, one car per bedroom might be someone's formula, but in practicality it has serious neighborhood impacts. To impact a neighborhood because it was decided that one rule allows less parking is not the correct interpretation.

Chair Gezelius did not believe the current proposal was the only solution for open space, parking, density and design for this site. She felt certain there was a better way to do this project, but she was unsure how to get there.

Mr. Burnett understood Chair Gezelius' concerns. However, the Appellant made four specific appeals on the grounds for that appeal. He pointed out that wanting to see a different parking standard was a policy call for the City Council. The Planning Commission is not able to make that change. Mr. Burnett remarked that the BOA needs to deal with the appeal on the grounds of the points made in the Appeal. For example, it is not about whether more open is desirable. The issue is whether the project is a redevelopment of existing development. If the Board does not agree that it is a redevelopment, they would have to make a Finding showing why the Planning Commission was wrong in applying that provision of the Code. Mr. Burnett stated that setbacks are tied to being necessary to provide architectural interest and variations; not what the neighbors would prefer. Another question is whether Historic Design Review is triggered by the relevant provisions of the Code. The same applies to parking as to whether

this is an Affordable Housing project under the Code. Mr. Burnett emphasized that the Board needed to make specific findings before they could ask the Planning Commission to look at it again. They Board cannot remand it back to the Planning Commission only because they would have made a different decision.

Board Member Wilson asked if the Board could hear the specific language in the Affordable Housing MPD section that says the project must be 100% affordable. Director Erickson stated that the language in the Code states that in order to use the exceptions of the Code for affordable housing, the project must be 100% affordable.

Mr. Burnett remarked that the Appellant's point is that the language is not clear. However, Mr. Burnett stated that his point is if it is subject to competing interpretations, the applicant gets the benefit of the doubt. In this case, the City is the applicant. Mr. Burnett clarified that the tie goes to the applicant in land use and zoning. Even if there is an ambiguity, if it is acceptable in both interpretations, the applicant gets the benefit.

Planner Tyler pointed out that this project is not in the Historic District. It is in the Recreation Commercial Zone. She also clarified that 1302 Norfolk is included within the project boundary, even though the house itself is not being touched.

Board Member Franklin referred to Section 15-6-7, the Affordable Housing Development, and she agreed that the second paragraph was confusing. She noted that Item E discusses Density, but density is also in the second paragraph under Item A, Purpose. Ms. Franklin understood that Items A and E did not apply because even though the language was cited, this project was not applied for under this development section because it is not an Affordable MPD.

Director Erickson replied that Ms. Franklin was correct. He explained that every MPD has affordable housing inside the project in some location per Code. However, that does not trigger the affordable housing option in the MPD section of the Code. Director Erickson stated that if an applicant wanted to use the exceptions for density and reduce setbacks further, they would probably make an application for 100% affordable.

Mr. Burnett clarified that it would take a quorum of three Board members to remand this back to the Planning Commission. He did not believe the Staff or the Legal Department was prepared to assist the Board this evening in preparing Findings and Conclusions. Mr. Burnett recommended that the Board could pass the motion and direct the Staff to come back with Findings and Conclusions at the next meeting.

Director Erickson stated that the Board had two options. They could vote one way or the other on the entire Appeal; or they could go through the four appeal

points, approve or deny, and direct the Staff to prepare findings. Director Erickson thought it would be cleaner to take action on the Appeal as a whole; however, if there are dissenting opinions among the Board members on specific points, they should vote individually.

Board Member Wilson thought it would be more beneficial for the Planning Commission to know which specific items were in question rather than asking them to start over. Mr. Burnett stated that if they reverse the Planning Commission decision, the Board will need to articulate why so the Staff can prepare Findings and Conclusions to support the Board's decision. The Findings and Conclusions would contain the specific details to guide the Planning Commission.

Chair Gezelius thought the first motion should be to take action on the Appeal before the BOA this evening. Board Member Fuegi thought a better approach would be to first see if there was consensus among the Board members on each of the four points.

Board Member Franklin read from the fourth bullet point in the Staff report. "The Board of Adjustment may remand the matter back to Planning Commission with directions for specific areas of review or clarification". She asked if there would be conditions of the remand rather than conditions of approval. Mr. Burnett clarified that by definition the Board is limited to the four points the Appellant made on the Appeal. He remarked that a remand is not a do-over of everything. The remand must be specific as to why the Planning Commission erred in their decision.

Board Member Wilson thought the Board should vote on each point individually.

Mr. Burnett suggested that if the Board would have a discussion first to see if there was consensus, that would lay the groundwork for a comprehensive motion rather than four individual motions.

Chair Gezelius referred to Point 1 – Open Space, and asked whether the Board agreed with the Appellant's claim that the open space requirements are not met because it is not redevelopment of an existing development.

Board Member Wilson thought it was redevelopment and that the open space could be reduced. Board Member Fuegi agreed. Jennifer Franklin concurred that the project is redevelopment. Chair Gezelius noted that the majority of Board members agreed that the project is a redevelopment.

Chair Gezelius referred to Point 2 – Setbacks. The setbacks have been reduced significantly and the Appellant argues that the reduced setbacks are not sufficient.

Board Member Wilson was still struggling with setbacks because she had not been given any justification that the reduction is necessary. She wanted to know if other designs were considered that may have met the setbacks and what those look like. Board Member Fuegi was not convinced that the setback reduction is necessary. Board Member Franklin concurred.

Chair Gezelius clarified that there was Board consensus that the setback reduction may not be necessary.

Chair Gezelius referred to Point 3 – Historic Design Review requirements. She noted that the Staff and Counsel both explained that the Historic Design Review was not triggered in the process. Board Member Wilson stated that if no Historic Design Review is required and it was not triggered per the Code, she did not believe it needed to be done.

Board Member Fuegi understood from Planner Tyler that a full review would not be required because the project is not in the Historic District and the existing historic structure would not be touched. He asked if there would be a partial review afterwards or if this was the only opportunity to request a review. Planner Tyler stated that because it is a historic site that would trigger a Historic District Design Review, depending on the scope. In this case, a lot was subdivided and the adjacent lot is no longer part of that site. All of the work is on the neighboring site. A small piece of the driveway will be on the historic site, but based on the scope and the removal of non-historic fences, it would not trigger a full Historic District Design Review. Mr. Fuegi asked if there would be any historic review at any time. Planner Tyler stated that in the future if the City or a future owner wanted to remodel the structure it would definitely trigger a full Historic District Design Review application. At this time the scope of work on the actual physical structure is not enough to trigger the full review.

Based on Planner Tyler's explanation, Board Member Fuegi agreed that the HDDR is not necessary.

Board Member Franklin did not think they could talk about setbacks without also talking about the space between 1302 Norfolk and Lot 3. She believed that piece would be impacted as well and she would like it included in the entire parcel. Mr. Burnett was not opposed to including that piece as part of the setback review; however, no applicant, whether it is the City or someone else, must include all the property they own in an application. Mr. Burnett stated that the question is whether or not Ms. Franklin agrees with the Appellant's determination that the Historic Design requirements have not been met.

Board Member Franklin agreed with the Appellant that the HDDR requirements have not been met. Chair Gezelius agreed.

Chair Gezelius referred to Point 4 – Parking Requirements. Mr. Burnett cautioned the Board to only consider the requirements; not what they would prefer to see for parking. The issue is whether this is an affordable housing projects and that portion of the Code applies; or whether it is an MPD that contains affordable units and a different section of the Code applies.

Ms. Franklin stated that she agreed with the Appellant in that this is a Master Planned Development with an affordable housing component; and therefore, the parking requirements are not met. Chair Gezelius concurred.

Board Member Fuegi pointed out that Section 15-6-7 allows an applicant to get more density. The City, as the applicant, did not take advantage of this section to increase the density. Mr. Fuegi thought the spirit of Section 15-6-5 was met. Board Member Wilson agreed with Mr. Fuegi. While the language is somewhat ambiguous, she believed the spirit of the LMC was to use that Code when requesting additional density. Ms. Wilson clarified that her comment set aside her personal feelings about traffic and parking on the street.

Mr. Burnett stated that it takes three votes to reverse the Planning Commission action. On a 2-2 vote the Planning Commission decision stands. He suggested that they could try to address all four points in one motion; however, based on the votes, they may have to break it down into different motions.

Chair Gezelius noted that there was Board consensus on setbacks.

Board Member Wilson asked if the Board should make a motion to remand it back to the Planning Commission based on setbacks alone. Director Erickson thought there was also consensus on the redevelopment question. The HDDR and Parking were split 2-2. Board Member Fuegi wanted to know what would happen if the Board voted on a motion and the final vote was 2-2. Mr. Burnett reiterated that the Planning Commission decision would stand because it takes three votes to reverse it.

Board Member Wilson summarized that there was Board concurrence on Point #1 and #2. Point #3 and #4 was split 2-2, which gives the advantage to the applicant in the event of a tie.

MOTION: Board Member Wilson moved to reverse the decision of the Planning Commission and remand it back to the Planning Commission to address the issue of setbacks on the basis that the Board determines that the Findings of the Planning Commission were inadequate to establish that the reduction of the setbacks is necessary to provide architectural interest and variation. Board Member Fuegi seconded the motion.

VOTE: The motion passed 3-1. Board Members Gezelius, Fuegi, and Wilson voted in favor of the Motion. Board Member Franklin voted against the motion.

Board of Adjustment Meeting
June 25, 2019

Mr. Burnett stated that the Staff would prepare Findings and Conclusions to support the motion adopted by the majority of the Board members, to be presented at their next meeting.

Chair Gezelius adjourned the meeting at 6:38 p.m.

Approved by _____
Ruth Gezelius, Chair
Board of Adjustment

PENDING APPROVAL

Board of Adjustment Staff Report

Subject: Appeal of the Woodside Park Phase II Master Planned Development Application
Author: Hannah M. Tyler, AICP – Senior Planner
Project Number: PL-19-04241
Date: July 16, 2019
Type of Item: Approval of Written Decision for the Appeal of Planning Commission’s Approval of the Master Planned Development Application

Summary Recommendations

Staff recommends the Board of Adjustment approve the Written Decision for the Appeal to grant the Appeal in part on the Appellant’s second point regarding setback requirements, which has the effect of upholding the Planning Commission’s decision in all other respects.

Background

On June 25, 2019 the Board of Adjustment reviewed the Appeal of the Planning Commission’s Approval of the Master Planned Development application for the Woodside Park Phase II Affordable Housing Project located at 1330 Empire Avenue, 1302 Norfolk Avenue, 1361 Woodside Avenue, and 1323 Woodside Avenue ([Staff Report and Exhibits](#)). The Board of Adjustment adopted a motion granting the appeal in part as to setback requirements and directed staff to return with a written decision granting the Appeal in part and remanding the review of Setbacks pursuant to LMC 15-6-5(C) to the Planning Commission.

PROPOSED WRITTEN DECISION GRANTING THE MASTER PLANNED DEVELOPMENT APPLICATION AND REMANDING THE REVIEW OF SETBACKS PURSUANT TO LMC 15-6-5(C) TO THE PLANNING COMMISSION:

1. On June 3, 2019, the City received an application for an Appeal of the Planning Commission’s Approval of the Master Planned Development application for the Woodside Park Phase II Affordable Housing Project application located at 1330 Empire Avenue, 1302 Norfolk Avenue, 1361 Woodside Avenue, and 1323 Woodside Avenue. On June 10, 2019, the Appellant provided supplemental information. This appeal was submitted within 10 days of the Final Action of the Planning Commission.
2. Development may be appealed to the Board of Adjustment at the City Council’s request. On June 6, 2019, City Council affirmatively referred the appeal of the Woodside Park Phase II Master Planned Development to the Board of Adjustment.
3. On June 11, 2019 notice was mailed to property owners within 100 feet for the Appeal. Legal notice was also published on the Utah Public Notice Website and Park Record on June 8, 2019 according to requirements of the LMC.

4. At the meeting on June 25, 2019, after conducting a public hearing, the Board of Adjustment determined that the findings of the Planning Commission in reference to [LMC 15-6-5\(C\) MPD Requirements - Setbacks](#) were inadequate to establish that the reduction in setbacks was necessary to provide architectural interest and variation; therefore, the Board of Adjustment is remanding the review of Setbacks pursuant to LMC 15-6-5(C) to the Planning Commission.

Order

1. The appeal of Planning Commission's Approval of the Master Planned Development application located at 1330 Empire Avenue, 1302 Norfolk Avenue, 1361 Woodside Avenue, and 1323 Woodside Avenue is Granted in part with respect to the Planning Commission's decision regarding the compliance of the proposed project with Master Planned Development requirements LMC 15-6-5 and the application is remanded to the Planning Commission for the limited purpose of reviewing of Master Planned Development Setbacks pursuant to LMC 15-6-5(C) .
2. The appeal is denied in all other respects.