

PARK CITY MUNICIPAL CORPORATION
BOARD OF ADJUSTMENT
MINUTES OF APRIL 17, 2018

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

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

ROLL CALL

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

ADOPTION OF MINUTES

February 27, 2018

MOTION: Board Member Franklin moved to APPROVE the Minutes of February 27, 2018 as written. Board Member Wintzer seconded the motion.

VOTE: The motion passed unanimously.

PUBLIC COMMUNICATIONS

There were no comments.

STAFF/BOARD MEMBERS COMMUNICATIONS AND DISCLOSURES

Director Erickson reported that the term expires June 2018 for one Board member. They will be looking for applicants and he encouraged the member whose term expires in June to re-apply.

Director Erickson was unsure when the next Board of Adjustment meeting would be scheduled.

REGULAR MEETING – Discussion, Public Hearing and Possible Action

341 Ontario Avenue – Applicant is requesting a variance to Section 15-2.2-3 (E) (Front Yard Setbacks), Section 15-2.2-5 (Building Height), and Section 15-2.2-5 (A) Building Height of the Park City Land Management Code (LMC) for the purpose of constructing a single-car garage addition to a “Significant” historic house with living space and decks. (Application PL-16-03138)

Planner Anya Grahn noted that the Staff report summarized the history of this application. The BOA previously reviewed this variance request in June 2017. The application had not changed. At the time of the last review, the Board of Adjustment discussed a number of items.

Planner Grahn reported that a historic house sits on the site and the house has been designated as Significant on the Historic Site Inventory. One of the unique conditions of this lot is that Ontario Avenue is built in the right-of-way, but the right-of-way in paved Ontario is a distance away from the front lot line. Another unique condition driving the design is that the historic house is 35' to 36' below the grade of the road, which is a significant drop.

Planner Grahn stated that during the last meeting the BOA discussed whether there were ways to mitigate the mass and scale of the proposed addition so it would not overwhelm the historic house. There was concern that granting the variance would add additional height, bulk and mass. At that time, the Board requested that the applicant re-review the request, look at possible design changes, and come back with a more thorough presentation to support why this was the best design.

Planner Grahn noted that the Staff still supported the variance. Three variances were being requested. The first was a reduced front yard setback along Ontario Avenue so the attached garage and proposed addition could be accessed from Ontario Avenue. The current front yard setback requirement is 10'. The applicant was requesting 4-1/2 feet.

Planner Grahn stated that a zone height exception was being requested. The LMC requires a maximum height of 27' above existing grade. The applicant was proposing 35' above existing grade. She thought it was important to note that the 35' height is consistent with the height exception that the Planning Commission could grant. However, when the Planning Commission grants that height exception, it is for a garage on a downhill lot when parking is being provided in a tandem parking configuration. In this case, the applicant was not providing a tandem parking configuration because there is not enough space available on the lot to do so.

Planner Grahn remarked that the third variance being requested was for interior height. The LMC limits the interior height to 35' and the applicant was requesting 39'.

Matthew Day, the applicant, reviewed the materials that the BOA had requested at the June 2017 meeting. Mr. Day noted that the Board had requested four items. The first related to the design history. The question was whether creative architecture could solve the problem and eliminate a height variance. Mr. Day was prepared to show the designs that were done over the past four years to

explain why they had no choice but to request the variance. Mr. Day recalled that at the last meeting he talked about 422 Ontario but did not provide much background. He noted that 422 Ontario had the same situations and hardships, and the same variances were sought and granted. He was prepared to better argue that point.

Mr. Day recalled three follow-up questions from the Board that he was not able to answer at the last meeting. He was back with the answers to those questions. Mr. Day was also prepared to discuss the five criteria for approval.

Mr. Day commented on the design history and provided the detail requested to show they had tried everything possible with the design to find an architectural solution besides a height variance. The crux of the problem is that the historic house is at the bottom of the lot and Ontario is 35' above it. If the maximum height is 35', it is impossible to build a garage at the Ontario level and still be under 35'.

Mr. Day recalled a question at the last meeting about putting in a driveway that slopes down, which would put it under 35'. He knew it did not work but he did not have an example available to explain why. He provided an example this evening. He pointed out that the total height allowed over grade is 27'. Assuming the garage is 10' high, it leaves 17' feet to work with. That means the garage would have to be 17' above the ground. Mr. Day stated that in order to make the garage low enough to sit under the 27' height, it would have to be 72' away from the road. Since the lot is 70', that would not work. Mr. Day stated that in trying to resolve the problem, Planner Grahn had referenced LMC Section 15-2-5, which addresses the exception for a garage on a downhill lot. He pointed out that the exception has always allowed additional mass and scale for garages on a downhill lot. He indicated eight ordinances since 2000, and noted that eight times the City held up the idea that additional mass and scale goes to a garage on the downhill lot. For that reason, they considered the exception.

Mr. Day stated that based on that exception they moved into planning. In February 2014 they purchased two lots. They went to the City with a plan to combine the two lots, replat the lot, and build one house. He pointed out that voluntarily reducing the density from one house to two reduced the amount of mass and scale that could be built on two lots. Mr. Day remarked that by October 2014 the two lots had been replaced into one lot.

Mr. Day stated that the first application was submitted to the City in December 2014. The basic plan had a double car garage and the size of the house maximized the lot. That plan was rejected by the City and he was told that a two-car garage did not fit within the Historic District Design Review. In January 2015 he submitted the same design with tandem parking. At that time, they were under the impression that it would satisfy the tandem parking rules. Mr. Day noted that they moved forward based on that assumption, but he was later told

there was a height problem. He explained that the way the exception was drafted at the time; it was unclear whether the variance for height referred to a 35' variance or a 27' variance. It had been construed that it only referred to 35'. Based on that argument, they believed they could get a 35' height variance, but they still had to keep it under grade. Mr. Day pointed out that they were working under that assumption until the ordinance changed in 2016.

Mr. Day presented the first design that was submitted to the City. In trying to keep under grade, they considered replatting back to two separate lots with separate buildings. The living space would be on the top lot, they would leave the historic cottage untouched, and put a garage at street level. Under the rules they could do that with two lots. Mr. Day pointed out that with that design the garage would be higher than what was currently being proposed. That particular design was shut down because the City Engineer indicated that anything that connects the properties makes them the same property. Therefore, it did not solve the lowest floor plane to the highest part of the garage problem. Since it was what they wanted to build in the first place so they went back to the drawing board.

Mr. Day stated that they tried to make the structure as low as possible and designed a flat roof. He presented the design that was submitted in May 2016. It was the first time they talked about a variance where it was pushed back 5' instead of 10' so they could push the mass into the hill. The Staff supported that plan. However, there was a lot of talk at that time about flat roofs and whether people liked them. There were issues with party decks and concerns that it would be encouraged by flat roofs. Mr. Day noted that he was advised by Staff not to do a flat roof. Mr. Day stated that prior to 2016 the exception allowed height interior but not grade. It also did not allow additional space for circulation, entrance, stairs. They had to comply, which is why they shrunk the top floor and cut out a nook. The City did not think the nook looked good from across the Canyon. In addition, none of the two-lot wide houses had chunks cut out. Mr. Day reminded the Board that they were still trying to keep under the grade height.

Mr. Day remarked that in June 2016 they submitted another design. That design had a long sloped roof. It was not their favorite design, but they kept it under the grade. Mr. Day stated that the Staff liked the approach of a sloped roof, which was more consistent with the town; however, because of the roof pitch the entrance from the Ontario Street level was much larger than his neighbors'. The Staff encouraged them to move forward with that design but to make it smaller from the Ontario side. Mr. Day stated that another design was submitted in July 2016. The design was primarily the same but the pitch of the roof was different. They had reduced the pitch of the roof to the minimum pitch allowed under the Code. The Staff was comfortable with the front façade, but they had issues with the cross-valley view of the roof. They suggested that they explore a more traditional pitched roof that would better fit with the town.

Mr. Day presented the design that was submitted in September 2016. It continued to follow the pitch of the roof down, but instead of going straight up to Ontario, it was pitched down again on Ontario to make the front façade smaller. All the awnings were cut off to reduce the mass and scale from both side. The Staff supported the design with the comment that the A-symmetrical roof was not consistent with the historic nature of the town. They suggested a more traditional pitched roof. Mr. Day stated that by this time there was a second ordinance which expanded the amount of variance that would be granted for a garage on a downhill lot. The previous ordinance only applied to interior height. After the ordinance was changed in 2016 it applied to interior and design height, and it also allowed entry space, elevators, a porch, stairs, and a functioning garage.

Mr. Day presented the design that was submitted in February 2017 that they believed fit with Old Town. The Staff liked the concept but asked them to make it smaller. Mr. Day explained that by moving the driveway to the other side they were able to drop the house by 3' and reduce the roof pitch. That design was submitted in March 2017.

Mr. Day remarked that in March 2017 they had achieved a design for the basic structure after a number of iterations over four years. The structure fit the town, the lines were the right length, and the angles were right. It was a simple structure. From that point they moved on to windows, which was an important part of breaking the mass and making it fit with the town. By late March 2017 they had the final design. Each of the windows were a 2:1 ratio, and they matched the windows of the historic house. He presented the cross-valley view to show how small the roofline looked.

Mr. Day stated that after four years they were ready to go to the Planning Commission and that was when they were told they had a parking issue. He explained that they are allowed a variance under the garage on the downhill lot if they provide tandem parking. Tandem parking was provided in the design, but the problem is that the lot line is so far away from the road that the second car parks across the lot line. Mr. Day pointed out that the garage after it is built would still be between 18-1/2' to 19' from the road. A minimum parking spot in Old Town is 18'. He clarified that it was not a safety issue. It was just a technicality, but it was no longer considered tandem parking.

Mr. Day remarked that their only recourse was to request a variance from the Board of Adjustment. They came before the BOA in April 2017, and he appreciated that the Board delayed their decision to give him the opportunity to come back with a better prepared presentation and to explain all of the design iterations that were done to achieve the smallest and least mass and scale, and still have a garage at the Ontario level.

Board Member Wintzer clarified that Mr. Day was still requesting the 35' height. He answered yes.

Board Member Fuegi referred to Mr. Day's comment about the 14% on the driveway where the house would have to be pushed out 72'. He asked for the difference in height if they were to leave the garage towards the lot line as planned, and make the driveway 14% rather than 8% grade. Mr. Day explained why there was no room to move the grade of the driveway.

Mr. Day stated that the next issues pertained to 422 Ontario. At the last meeting they discussed the obligation of the Board of Adjustment to follow previous decisions and precedent. To find answers he spoke with administrative attorneys in Salt Lake. He understood that because the Board of Adjustment is not a judicial body, their decisions do not create legal precedent that they have to follow. However, they need to treat applications consistently from one case to the next. If two cases are so similar that they could almost be the same, the applicant should expect the same decision. Mr. Day believed that his application was so similar to 422 Ontario that he should have the benefit of the same decision because he was requesting the same variances.

Mr. Day outlined the comparison of his property at 341 Ontario to the property at 422 Ontario, which was approved by the BOA. It has a historic house on the site and the HSI designation is Significant. It has an addition behind the house with a garage underneath. Mr. Day fully supported what his neighbors had done and noted that his comparison was not meant to be criticism of what was built. He stated that in terms of building height, 422 Ontario had asked for a variance that would allow the building to be 41' high. He was requesting a variance of 39'-6". 422 Ontario did not have a garage on Ontario, and it was an unusually steep lot; which is the same as his submission for 341 Ontario. Mr. Day showed what was approved to be built at 422 Ontario. Regarding setbacks, 422 Ontario requested a zero-foot setback so their garage would sit on the lot line. He was requesting a smaller variance so the garage would be set back 4'-6" back rather than 10' from the lot line. Mr. Day understood that the BOA granted the setback variance for 422 Ontario because the house was unusually far from the road; the same as his. The conclusion was that once the garage is built it would still be 12' from the road. He pointed out that when his garage is built, it would be between 18-1/2 to 19-1/2' from the road. Mr. Day stated that 422 Ontario requested side yard variances in order to have 3' side yards rather than 5' side yards. He noted that he was not requesting side yard setbacks. One side would be 9' and the other side would be 5'. Mr. Day commented on the issue of four floors. He did research and spoke with the City Staff to understand the history. He stated that 422 Ontario was also a four-story building that was also approved.

Mr. Day stated that an unusually steep lot was the main hardship that the BOA found for 422 Ontario. Because it was so unusually steep, it was impossible to be able to build a garage and still keep it under 35'.

Mr. Day presented both plans. He noted that the green diamonds represented the lowest and highest points on the lot. He pointed out that 422 Ontario had 40' of elevation from the lowest to the highest point. His lot has 48' of elevation. Mr. Day believed that indicated that both lots have the same problem; but his lot is steeper which creates an even greater need for the grade and height variance.

Mr. Day pointed to the property that was approved based on this mass and scale. He reiterated that 422 Ontario had requested side yard setbacks but he was not making that request for 341 Ontario. Mr. Day noted that 422 Ontario a 3' side yard setback on both sides. His setbacks at 341 Ontario are 9' and 5'. The difference is 8', which is approximately the width of the garage. Mr. Day clarified that the house that was approved at 422 Ontario was an entire garage width wider than what he was requesting.

Mr. Day noted that part of the discussion at the last meeting was whether his house was too wide and too massive relative to the streetscape. He compared the 422 Ontario streetscape to the 341 Ontario streetscape to show that 422 Ontario was considerably larger. Mr. Day explained how he had minimized the width of his home. Looking at the mass and scale from the street view, he thought it was obvious that his house was much smaller with less mass and scale than what was approved at 422 Ontario.

Mr. Day presented the cross canyon view. He noted that per the HDDR, old should be separated from new as much as possible; which is why his house sits forward with a grass garden next to it and the addition behind it. It is much smaller in mass and scale than what they were seeing at 422 Ontario.

Mr. Day provided a summary of the different points between 341 Ontario and 422 Ontario consolidated on to one page. Mr. Day pointed out that 422 Ontario had pedestrian access from Ontario; he does not. They have trash and municipal services; he does not. They have parking in front of their property. He does not have any parking on Ontario.

Mr. Day commented on questions that were raised at the last meeting that he was unable to answer at the time. He had researched the questions and was able to provide answers this evening.

Mr. Day noted that Chair Gezelius had pointed out that his cross valley view was outdated. He reviewed an updated view from a month ago. The red lines indicated new construction. In comparison, he did not believe his house looked overly massive. Mr. Day stated that throughout the process, there has never been pushback on the way they plan to preserve the historic house. It was easy to see the difference between the little cottage and the extension behind it.

Mr. Day noted that the next question related to Criteria 2 and 3. He pointed to two historic cottages moving down Ontario Avenue. At the last meeting the Board questioned the uniqueness of his circumstance. Another question was the right to have a garage if two other properties do not have a garage. Mr. Day had spoken with the attorneys and he was told that there is no argument under Utah Law that says special means “only” and “widespread” means all. That being the case, he walked up Ontario and counted 56 houses on Ontario. Of those 56 houses, only three lots do not have a garage. Mr. Day believed they could argue that it was a special circumstance he is only one of three out of 56 homes that do not have a garage; combined with the fact that the lot is so steep a garage is not allowed to be built. Mr. Day remarked that regarding Criteria 3, if 53 of 56 neighbors have a garage is a substantial property right.

Mr. Day remarked that the final question was the issue of four stories versus the height limit. He pointed out that his design is four-stories, and the question was whether the Ordinance in 2013 was put in place as an effort to eliminate four-story structures. Mr. Day stated that the answer was unequivocally no. The issue was that developers were building half stories, which actually resulted in six or seven stories buildings, which is why the houses on this side of Ontario were so large. Mr. Day pointed out that the 2013 Ordinance addressed that scenario. He explained that the change eliminated the definition, including all stories, and made it a pure height definition. It calls for a 35’ height limit, and a 27’ height limit on grade. Mr. Day remarked that even with the changed Ordinance, the LMC still preserved the variance that allows additional mass and scale for garages on a downhill lot. In 2016 it was reaffirmed and expanded to call out the height for both for both zone and grade”. Mr. Day stated that two Ordinances from 2013 and 2016 state the intention of allowing flexibility for building a garage on a downhill lot because it is difficult.

Board Member Wintzer understood from the site plan on page 33 of the Staff report that the square footage for the house was 4,422 square feet. Mr. Day replied that it should be 3,900 square feet. Director Erickson noted that the square footage was also reflected on page 9 of the documents that the applicant had submitted this evening. Mr. Day replied that 4,422 square feet was correct in December 2014, but it was no longer accurate. Ms. Wintzer clarified that under the current plan the square footage was 3900 square feet. Mr. Day replied that she was correct.

Board Member Wintzer referred to the comparisons and noted that 422 Ontario had 4,464 square feet footprint for their lot, and Mr. Day has 3,750 square feet footprint. However, the square footage of the house at 422 Ontario was only 2300 square feet. Mr. Day believed it was a 2300 square foot addition on top. He agreed that the house was smaller but it was still a decent size. Ms. Wintzer stated that she was trying to make the comparison that 422 Ontario had a larger footprint but chose a much smaller house. Mr. Day believed that the bigger issue

was mass and scale and how the house looks from the outside, as opposed to the number of rooms inside the house.

Board Member Wintzer disputed Mr. Day's claim that the amendment to the LMC was not because of four-stories. She believed that it was specifically for that reason. Ms. Wintzer stated that 310 Ontario was the last of several projects that prompted the amendment. The Planning Commission decided to move forward to reduce the mass and scale. Ms. Wintzer remarked that if the BOA chooses to grant the variance, she wanted Mr. Day to understand that it was very important to the Planning Commission and to the Old Town residents to reduce the look of mass and scale from the cross canyon view.

Mr. Day pointed to some of the houses that Ms. Wintzer had mentioned and noted that they were all larger than what he was proposing. Ms. Wintzer agreed. She thought the BOA needed to consider that all of those houses were allowed until the neighbors and the City decided that they no longer wanted mega homes.

Chair Gezelius remarked that the Ordinance addressed height rather than number of floors. It was an effort to correct the terminology and further define the parameters of development.

Board Member Fuegi recalled from the last meeting that an argument had been made for 422 Ontario that if the variance was denied, the applicant could potentially build a larger structure behind the house by re-separating the combined lots. Mr. Fuegi asked how that related to what the Board was looking at this evening for 341 Ontario. Mr. Day replied that it would be the same argument. However, he did not want to mention it because in his opinion it would feel like a threat. Mr. Day noted that he could build a separate garage on Ontario 27' above grade as long as the structures are not connected. That was what 422 Ontario had done.

Planner Grahn recalled that the comment made at the last meeting had to do with the grade of 422 Ontario. There was an existing retaining wall along Ontario Avenue and the green historic house was on top. Planner Grahn remarked that the historic house is on a flat portion of the lot and the grade increased up and down like a roller coaster. The applicant had said that if the Board of Adjustment did not approve the variance, they could start the addition on the flat portion, and following the grade as it rose up in the back of the yard over 27', they would be able to build a taller structure than what was being proposed at the time. Mr. Day stated that when he had read that, he did not believe it worked out mathematically. However, he could build a garage at the top of the street but it would be more mass and scale and it would be detached. It was not what he wanted or what the City would want.

Mr. Day presented photos showing the excavation that was done on 422 Ontario. He noted that it was a full excavation. The entire lot was dug out and there was

no preservation of grade. Mr. Day asked the Board to imagine a driveway running from the bottom to the top of the screen, which he believed was more than 14 degrees. It was the same reason why he could not go down 14 degrees and build a garage using the same math.

Board Member Fuegi asked for clarification on whether Day could build a 27' tall garage or a residence. Mr. Day replied that it was an accessory structure. Planner Grahn stated that if the garage met the setbacks and there were no requests for setback exceptions, it could be 27' above existing grade at the street. She noted that with that scenario the challenge was getting from the garage down to the historic house or into the historic house. They looked at ways to connect it and found that the International Building Code starts calling a connected building part of the same structure if the structure connects in two places. For example, if there is a deck between a house and the garage, because the deck is structurally attached to both pieces it is considered one structure. That was a loophole they were not able to resolve and it created height issues for Mr. Day.

Mr. Day thought a solution around the loophole would be to put stairs up to the footpath and walk along the footpath to the garage. It would be regulation driving design and the result would not be the most desirable building.

Board Member Robinson understood that the Board needed to look at the five criteria that apply to the proposed variances. However, there is a lot of discussion about mass and scale, which is a design issue versus a Code issue. Mr. Robinson was unsure how much he should put mass and scale into the process to address this question.

Assistant City Attorney McLean explained that the Board is tied to the criteria. As they look through the criteria, if mass and scale is triggered by any of those criteria then it ties into their review. She agreed that mass and scale were design issues, but the Board needs to find that the application complies with all five the criteria. Ms. McLean stated that the Board needs to determine whether the mass and scale is achieved within the criteria. From looking through the Staff report and the discussion at the last meeting, she recalled that mass and scale was linked to the Spirit of the LMC in one of the criteria.

Board Member Franklin asked if the Historic Design Review follows this process when looking at the criteria. Chair Gezelius answered yes; but the HDDR is outside of the Board's purview.

Assistant City Attorney McLean stated that the Historic District Design Review is a separate process that occurs and it has its own criteria and requirements. She pointed out that without these variances this application does not meet the Code and could not be approved.

Board Member Fuegi asked if 422 Ontario had to go through the same HDDR process. Planner Grahn replied that it did go through a Historic District Design Review application and it was approved. A Steep Slope CUP was also approved by the Planning Commission and a building permit was issued.

Mr. Day stated that this variance is the first step in the process because he cannot do anything without the variance. If the variance is granted it goes to the Historic District Design Review to see if it fits with the town. If the HDDR is approved, it goes through a material deconstruction review to address how they preserve the historic house. Following that, it goes through a Steep Slope CUP with the Planning Commission, which is the bulk of the actual design analysis, including mass and scale. Mr. Day believed that mass and scale relate to Criteria 5, but it is also a component of the Spirit of the LMC. He clarified that if the BOA grants the variance, it has to through several other approval processes before he could build.

Mr. Day reviewed the criteria. Criteria 1 is the hardship. He remarked that the crux of this application is that there is no garage and 341 Ontario is one of the steepest lots at 48'. The steepness makes it impossible to build a connected garage under 35'. He believed that was the hardship. Mr. Day pointed out that there is limited parking on Ontario and there is no parking at all adjacent to his property. Mr. Day noted that it was concluded for 422 Ontario that not having a garage on Ontario with an unusually steep lot is an unusual hardship.

Mr. Day outlined a number of additional hardships for his lot that 422 Ontario did not experience. The biggest hardship is the lack of pedestrian access from Ontario. He has to walk up Shorty Stairs and down a small lane to reach his house. Another issue is that the small path is private so the City does not maintain it and no one else has a need to use it so no one maintains it. Mr. Day stated that an additional hardship is the fact that he has no access to Municipal trash and recycling services.

Mr. Day commented on Criteria 2, which addresses special circumstance. He believes that if 56 people on the road do not experience the issue then it is a special circumstance.

Mr. Day noted that Criteria 3 addresses substantial right. He stated that if 53 or 56 houses have parking, a garage, access from Ontario, and access to Municipal services, then he would argue that those are a substantial property right that he does not have. Mr. Day believed that a garage and basic Municipal services are some of the most basic property rights.

Mr. Day remarked that Criteria 4 addresses public interest. It states that a variance will not substantially affect the General Plan and will not be contrary to public interest. He outlined a number of reasons why he thought the requested variance was in the public interest.

Mr. Day noted that Criteria 5 goes to the Spirit of the LMC. He believed much of Criteria 5 overlaps with Criteria 4. This project preserves the historic house, and the LMC is about protecting historic homes. The design has new construction sitting back away from the historic house, and the historic house can be seen from the cross valley view. Mr. Day stated that historic homes are very small and unless they can be made functional and livable they will not be preserved. Being able to do this extension makes this historic house a functional property. Mr. Day remarked that the front yard variance would allow them to sink the mass into the hill to reduce the mass and scale. It creates a consistent streetscape. It allows access to Municipal services in a safe way. He believed the 2013 and 2106 Ordinances were the argument for allowing additional mass and scale for garages on a downhill lot. He pointed out that the 2016 Ordinance expanded the amount of variance allowed.

Mr. Day commented on the Old Town community. He stated that when he makes an application he has to send a letter to everyone within 300 feet of his house, which was 55 neighbors. Of the 55 neighbors only 22 have Park City addresses. He asked the Board if they want Old Town to become a place like Vail Village with primarily second homeowners; or if they want families and people who want to live in Park City full time. Without full time residents they will not have a community for the LMC to protect. Mr. Day noted that he and his wife are active members in the community. They live and breathe preservation and they care about these historic sites. They intend to remain in Park City and would like to build a house that is set back in a way that will not upset their neighbors. He and his wife really want to preserve this historic house.

Board Member Wintzer understood that the plan in the Staff report was the plan Mr. Day brought forth a year ago. He replied that she was correct. Ms. Wintzer stated that when she read the Minutes of the previous meeting and their comments in asking for a reduction in mass and scale, her initial thought after reading the Minutes was that if this was the exact plan none of their requests had occurred. The only thing that did happen was that a legal ruling was given. In looking through the Staff report, she thought that rather than trying to reduce the mass and scale the applicant was here a year later with the exact same house without any effort to make adjustments.

Mr. Day was unsure if it was reflected in the Minutes, but he recalled at the time saying that he would not be doing that plan because there was no way to further reduce the mass and scale. However, the Board thought Mr. Day should have at least tried. He left that meeting and put together a presentation of four years of iteration showing that this was the lowest mass and scale. The only thing he could do would be to cut off the triangle roof and make it a flat roof. He was willing to do a flat roof if it would achieve approval, but he did not think it was consistent with the town. A tradition pitched roof looks better with the streetscape.

Board Member Franklin asked if the cottage has a foundation. Mr. Day replied that it was rocks on dirt.

Chair Gezelius opened the public hearing.

Mike Stewart stated that he is a neighbor to the downhill side of 341 Ontario. He had reviewed the plans Mr. Day had provided and looked at everything in detail. He purchased his lot in the 1970s and built his home on it in 2000. He was currently adding an ADA elevator because he wants to stay in Old Town. Mr. Stewart stated that after reviewing Mr. Day's plans he was impressed with the approach and the attempt that was made to preserve a house that was built around 1900. Mr. Stewart thought the design did an excellent job of preserving the visuals of the historic house. It is difficult to build in Old Town and it is expensive, and they need the City's help at every turn to do it right. Mr. Stewart stated that the approach Mr. Day has taken with his plan demonstrates his view as an Old Town resident and it is very much in keeping with the neighborhood. Mr. Stewart fully supported the scale and the mass. He likes what the City has done in dealing with mass and scale and they need to keep that intent for Old Town. After he reviewed Mr. Day's plans, he started looking at the historic house and he noticed that a hole was dug into the lot to place the house. He assumed it was done to make the house lower. If they had placed the house in a different location on the lot the variance would probably not be necessary. Mr. Stewart believed that Mr. Day was a victim of circumstance on that point.

Mr. Stewart commented on the garage. Parking in Old Town is a difficult issue and adding one off-street parking space is golden. He favored supporting whatever was necessary to allow that to occur. Mr. Stewart reiterated his support for the requested variances, including the front yard setback. He was in favor of moving the house forward to appropriately address the garage and other issues.

Ruth Meintsma, a resident at 305 Woodside, thought this lot was unique. She agreed that there were hardships on this lot. She did not agree with the applicant that not having a garage is a hardship. No off-street parking is the hardship. She thought the pedestrian access and access to trash could be mitigated. Ms. Meintsma believed the hardships were the restrictions on this lot; which is 1) the historic house, the first finished floor; 2) the low and high street level that is already defined; 3) that there is a historic house to work around; 4) the position of the historic house on the lot. Ms. Meintsma thought this applicant could have asked for a relocation of the structure.

Planner Grahn clarified that the applicant could have asked for relocation but she doubted that it would have gained Staff support.

Ms. Meintsma believed the exceptions are appropriate because of the restrictions and requirements. She noted that 352 Woodside was mentioned; however, the BOA did not see that project. It went to the HPB and City Council. 351 Woodside had requested an exception for the 35' interior, but it did not have a beginning defining line like this project. This project has a beginning defining lower floor that cannot be changed. Ms. Meintsma noted that the top floor is where the 27' from existing grade and the 35' interior grade come into play. She pointed out that the exception for the top floor includes garage and associated reasonable circulation. She noted that the square footage was no apparent in the Staff report and she asked the applicant for the first floor square footage. She asked if she was correct in believing that the entire top floor was the garage and associated reasonable circulation.

Mr. Day replied that she was correct.

Ms. Meintsma thought that it was the same as the last plan that was presented, and that nothing has changed. She believed the top floor could be modified slightly in mass. In the previous plan she believed the BOA had asked if the massing of the top floor could be modified because so much room was being requested. She noted that this was the same plan and the same massing. Ms. Meintsma believed the top floor could not be lowered because the two exceptions come into play. She asked if the massing could be modified to make the exceptions more appropriate.

Chair Gezelius assumed that was an issue that would be addressed in the HDDR. Planner Grahn stated that it would be included in the review of the LMC. She pointed out that the word "reasonable" has not been defined and they need to look at that closer in the Code. In response to Chair Gezelius' question, Director Erickson stated that the issue would be addressed in the HDDR.

Ms. Meintsma was comfortable with the exceptions requested for this property, knowing that specific issues would be address through the Historic District Design Review. She believed this piece of property requires exceptions in order to build properly around the historic house. However, she thought the massing on the top floor where the exceptions come into play should be considered.

Chair Gezelius closed the public hearing.

Chair Gezelius noted that the Staff had prepared findings for both approval and denial for whichever action the Board chooses. She remarked that in order to approve the variance request, the Board needed to find that the five criteria have been met to a satisfactory standard. Chair Gezelius called for Board member comments.

Board Member Robinson was confused on the issue of tandem parking where the exterior car would be a few inches over the lot line. Mr. Day replied that it

was not an issue for the variance. If he was going to use the variance under the Code to go directly to the Planning Commission, he needed to show that he could provide tandem parking with one car inside the garage and one car outside of the garage. Tandem parking does not have to be two cars inside the garage. Mr. Day explained that because the lot line is so far away, the second car crosses the lot line. The road is 18' away, so it does not create a safety issue, but because it crosses the lot line it is not considered legal parking and; therefore, does not qualify as tandem parking. If tandem parking is not satisfied, he cannot use the provision for a garage on a downhill lot.

Planner Grahn remarked that because the parking in the driveway would not be a legal parking space, if at some point the City came in and widened the road or did something that would limit the driveway, it would take away his exterior parking space because it is not completely within his property line.

Chair Gezelius stated that this was a typical condition along this street because as platted, this street is not exactly where the asphalt lies.

Board Member Wintzer noted that there are similar situations on McHenry and Park Avenue where the cars stick out. If the road is widened, the only way that could be stopped would be through enforcement. Planner Grahn agreed because that parking space is not protected as belonging to the property owner if the 9 x 18 parking stall is not within the property line.

Mr. Day pointed out that the driveway was still 19'6" away from the road. The minimum legal parking spot in Old Town is 18'. Board Member Wintzer stated that the problem is the number of very large trucks on the road.

Regarding Ruth Meintsma's question about the first floor, Board Member Franklin noted that Appendix H started on page 189. Ms. Franklin was leaning towards a positive recommendation to approve the variance for the front yard setback. She was struggling with variance 2 and 3 with the interior heights and the building heights. Although 352 Woodside and 422 Ontario were cited, Ms. Franklin had also looked up the records on 220 Ontario. However, she thought it might be in a different category because it may not have the same steepness of pitch, and it was attached with a stairwell. Ms. Franklin stated that one issue that was similar with 220 Ontario is that when they came before the Board of Adjustment and in their Historic Design Review, they were working towards staying within the 27' height limit.

Mr. Day clarified that when 220 Ontario came before the Board of Adjustment it was under the previous Code prior to 2016. It was the same problem he had with the Code prior to 2016. He could get increased height on the total height, but not on the zone height. Mr. Day noted that the Planning Commission intentionally changed the Code to stop that problem. After 2016 the Code was

changed to allow additional height on the 27' rule as well as the 35' rule. Ms. Franklin agreed. In 2008 and 2017, 220 Ontario stayed within the 27' height.

Ms. Franklin thought it was important when looking at the Historic Design Review that the delineation, the dimension of the cottage, having depth and separation, and whether or not the BOA needs to include language in any decision they make that talks about the public right-of-way and that the secondary tandem parking space could potentially be affected in the future.

Director Erickson clarified that if a car is parked in the driveway, the car would not encroach into the street. It would only encroach into the unbuilt right-of-way. The Board could add a condition of approval saying that it was not an approved parking space if they wished. Chair Gezelius did not think that would make sense.

Ms. Franklin clarified that she was only suggesting that they plan for the possibility that the road may need to be widened at some point. Mr. Day was not opposed to adding a condition to address that issue.

Planner Grahn noted that Condition of Approval #3 in the Staff report states, "Any parking in the drive will not be considered private parking". She thought that condition would satisfy Ms. Franklin's concern. Ms. Franklin was comfortable with the condition as written.

Ms. Franklin referred to page 31 of the Staff report related to the exceptions with garages on the downhill lot, and the clarification of reasonably sized front entry area. She noted that the language continues on to say, "compatible with the streetscape design". She thought Mr. Day had worked diligently to keep it compatible, but she thought they should continue to keep that in mind as it moves on to the HDDR.

Chair Gezelius stated that there was less emphasis than she anticipated regarding the very unique status of the few homes between Marsac and Ontario that were cut into the hill. She believed they were cut into the hill to achieve a level floor. Chair Gezelius did not think they should legislate that people will live in a 400 square foot house. That has been apparent over time as many historic structures have been lost. Chair Gezelius thought it was important to continue to encourage the restoration and integration of these small homes into modern living accommodations in an effort to maintain the historic district and still have livable housing.

Chair Gezelius stated that while she was not in favor of some of the larger homes in the area, she understood that this applicant has virtually a double lot and a larger parcel, and he could have asked for more. She appreciated that there was less mass that what could be built. Chair Gezelius recognized that even though it seems that the applicant was requesting a number of variances, it is a

challenged site. It is also a neighborhood hazard to have a drop-off on the side of the hill. It would be a public safety improvement and benefit the General Plan to create a safer situation for both the occupants of this house and the neighbors along the street.

Board Member Wintzer appreciated the presentation and thought it was very thorough. However, she wished they had done this a year ago, because with the exception of the legal opinion everything else was the same. She had wanted to call Sandra Morrison of the Historical Society to ask her about the historic nature of that street. Ms. Wintzer stated that she has lived on Rossi Hill for 36 years and has walked passed Mr. Day's lot many times. She loves the stairs that go down on the other two houses. The stairs are unique and characteristic of Old Town and create the stairs down off of Ontario.

Board Member Wintzer agreed with the comment that a garage is not a right in Old Town, but it is nice to have. Like Board Member Franklin, she could agree with the first variance, but she struggled with the other two. She knows the history of many of the houses in the neighborhood and many of them did not need a variance. Some were built when the height limit was taller and many of the newer ones are not over the 27' height limit. Ms. Wintzer pointed out that the former owners of this house parked in the parking garage. She realizes that lifestyles are different now and she was grateful that Mr. Day and his wife want to be full-time residents.

Board Member Wintzer felt that as a community, rather than continuing to request variances, if they want to give people the ability to have a garage and the type of house they want, the City needs to change the Code. However, until that happens, there is a reason why they do not want houses crawling up the hill. Ms. Wintzer thought the community needed to make some big decisions for the future so people do not have to ask for several variances. She felt that every time they give three variances they weaken the Code. Ms. Wintzer suggested that the Code should be changed to avoid having to request so many variances.

Board Member Fuegi thanked Mr. Day for a thorough presentation. He thought it was obvious that Mr. Day and his wife care a lot about this house. Mr. Fuegi noted that the role of the BOA is to determine whether or not the applicants meets the five criteria. They could weigh other issues, but the five criteria must be met. He pointed out that mass and the redesign was out of their purview and would be addressed with the HDDR.

Board Member Fuegi thought the five criteria had been met and he was willing to support the variance requests.

MOTION: Board Member Fuegi moved to follow the Staff recommendation to grant the three variances as requested, subject to the Findings of Fact,

Conclusions of Law, Conditions of Approval, and the Order as found in the Staff report. Board Member Robinson seconded the motion.

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

Chair Gezelius thanks the Staff, the applicant, and the public for participating in the process. She asked the Staff to keep the Board members advised as this application progresses through the system. She wished Mr. Day and his wife the best.

Findings of Fact – 341 Ontario

1. The property is located at 341 Ontario Avenue in the Historic Residential (HR-1) District.
2. The HR-1 zone is characterized by historic and contemporary homes on one (1) to two (2) lot combinations.
3. The property consists of all of Lot 1 of the Ontario Avenue Subdivision, recorded on December 18, 2014.
4. There is an existing 483 square foot historic house on the property. It is designated as Significant on the City's Historic Sites Inventory.
5. The existing historic house is setback from the front property line by 31.5 feet. It will have a distance of approximately 47 feet from the edge of asphalt on Ontario Avenue.
6. There currently is no vehicular access that can be attached to the existing historic house without the need of variances being granted. As existing, there is currently only a pedestrian easement, and it is located on the east edge of Marsac-facing properties to the west of the 341 Ontario Avenue lot.
7. The applicant is requesting a variance to LMC Section 15-2.2-3(E) to reduce the required ten foot (10') front yard setback to 4 feet 6 inches to allow for a new addition that includes a single-car garage to be constructed along Ontario Avenue. The proposed garage door would be setback a distance of 18 feet 4 inches to 21 feet 4 inches to edge of pavement.
8. The applicant is requesting a variance to LMC Section 15-2.2-5 Building Height above Existing Grade from 27 feet to 35 feet above Existing Grade. The increased building height is consistent with the height exception permitted by LMC 15-2.2-5(D)(4).
9. The applicant is requesting a variance to LMC Section 15-2.2-5(D) to the required maximum height of 35 feet measured from the lowest finished floor plane to the point of the highest wall top plate that supports the ceiling joists or roof rafters; the applicant requests a variance to allow an interior height of 39 feet 6 inches.
10. The applicant is requesting the three (3) variances in order to construct a new addition to the historic house that includes a single-car garage accessible from Ontario Avenue.
11. Literal enforcement of the LMC would not allow for construction of a code

compliant attached garage with access to the street that meets required setbacks, building height, and driveway slope requirements due to the steep slope of the lot and location of the historic house.

12. The steepness of the lot, the distance between the front property line and paved Ontario Avenue, and the location of the historic house at the downhill side of the lot are unique to this property.

13. Literal enforcement of the required 10-foot front yard setback is not necessary to carry out the general purpose of the Land Management Code, as the proposed addition will be setback from the existing edge of curb by a distance of 18 feet 4 inches to 21 feet 4 inches due to the distance between the property line and the street. Had the addition been located 10 feet west of the property line, it would have increased the bulk and mass of the addition due to the steep grade of the site and decreased the physical and visual separation between the historic house and its new addition.

14. The proposed exterior height of 35 feet above Existing Grade is consistent with the LMC height exception granted by the Planning Commission for a downhill garage providing tandem parking. The interior height of 39 feet 6 inches has largely been driven by the steepness of the slope and the location of the historic house on the downhill lot.

15. There are special circumstances attached to this property that do not generally apply to other Properties in the same zone. This house is one of the few properties along Ontario Avenue that have preserved its original grade and maintained the original placement of the historic house which was constructed on an elevation 36 feet below the existing road.

16. This property is unique in that paved Ontario Avenue is about 14 to 18 feet to the west of the front property line and is one of the steepest sloped streets in this part of town. In this area paved Ontario Avenue is located a greater distance to the east of its platted right-of-way than it is in other areas.

17. This section of paved Ontario Avenue is characterized by its steepness and limited width.

18. This site was historically accessed by pedestrians from the west side of the property; while this pedestrian path off of Shorty's Stairs has been maintained, there is no formal easement granting these owners access to their property from the path.

19. Granting the variance is 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 construct an attached garage at the street level without severely impacting existing grade, while also alleviating congestion and safety concerns on Ontario Avenue by providing off-street parking.

20. The variance will not substantially affect the General Plan and will not be contrary to public interest. It is within the public interest to reduce vehicle conflicts on Ontario Avenue. Parked cars are a safety hazard to other cars, delivery vehicles, emergency vehicles, pedestrians, and cyclists utilizing Ontario Avenue.

21. A reduction to the front yard setback will allow a garage and front entrance to be constructed along Ontario Avenue, providing both vehicular and pedestrian access to the site.

22. In order to construct a garage that meets the required front yard setback, the garage would need to be a completely detached building. The proposed addition would need to shrink considerably in size and height in order to comply with the LMC and would likely not be as visually separated from the historic house as currently proposed. If the garage were constructed to comply with the LMC as part of the addition, it would not meet the intent of the General Plan.

23. The spirit of the Land Management Code is observed and substantial justice is done. The variance will preserve the historic character of the site by allowing the historic structure to be visually separated from its new addition and maintain its orientation facing town.

24. The proposed variances will create an accessible attached garage and alleviate parking congestion along Ontario Avenue.

25. All other LMC related site and lot criteria, including the other setbacks, height, building footprint, parking, design, uses, etc. will be met.

Conclusion of Law – 341 Ontario

1. Literal enforcement of the HR-1 District requirements for this property causes an unreasonable hardship that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same district.
3. Granting the variance is essential to the enjoyment of substantial property right possessed by other property owners in the same district.
4. The proposal is consistent with the General Plan.
5. The spirit of the zoning ordinance is observed by this application.
6. It can be shown that all of the conditions justifying a variance, pursuant to LMC §15-10-9, have been met.

Order for Approval

1. A variance is denied to LMC Section 15-2.2-3 (E) to the required front yard setback exception from 10 feet to 4 feet 6 inches in order to allow for an addition to be constructed along Ontario Avenue.
2. A variance is denied to LMC Section 15-2.2-5 Building Height above Existing Grade from 27 feet to 35 feet.
3. A variance is denied to LMC Section 15-2.2-5 (A) to the required maximum height of 35 feet to 39 feet 6 inches measured from the lowest finish floor plane to the point of the highest wall top plate that supports the ceiling joists or roof rafters.
4. The variances run with the land.

Conditions of Approval – 341 Ontario

1. The variances are granted for the construction of an addition that will include a single-car garage, as indicated on the plans submitted with this application.
2. No portion of the garage shall be used for additional living space.

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3. Any parking in the drive will not be considered private parking.
4. All legal parking must be provided on-site and shall not encroach into the City's right-of-way.
5. The City Engineer will require an Encroachment Agreement for the proposed bridged driveway to be executed and recorded prior to issuance of a building permit.

Chair Gezelius adjourned the meeting at 6:47 p.m.

Approved by _____
Ruth Gezelius, Chair
Board of Adjustment